

## **ARTICLE 2**

### **GENERAL REGULATIONS**

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### **GENERAL REGULATIONS**

#### **PART 1     2-100   SCOPE OF REGULATIONS**

##### **2-101       Territorial Application of Regulations**

The provisions of this Ordinance shall apply to all land and all structures in the unincorporated territory of the County of Fairfax, Virginia.

##### **2-102       General Effect**

No structure shall hereafter be erected and no existing structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used or arranged to be used for any purpose other than is included among the uses listed in the following Articles as permitted in the zoning district in which the structure or land is located, nor shall any land or structure be used in any manner contrary to any other requirements specified in this Ordinance.

##### **2-103       (Deleted by Amendment #86-137, Adopted December 29, 1986)**

##### **2-104       Exemptions**

1.     The following structures and uses shall be exempt from the regulations of this Ordinance:
  - A.     Wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephone or other communications, electricity, gas, or water, or the collection of sewage or surface water operated or maintained by a government entity or a public utility including customary meter pedestals, telephone pedestals, distribution transformers and temporary utility facilities required during building construction, whether any such facility is located underground or aboveground; but only when such facilities are located in a street right-of-way or in an easement less than twenty-five (25) feet in width. This exemption shall not include any substation located on or above the surface of the ground or any such distribution facility located in an easement of twenty-five (25) feet or more in width which shall be regulated by the provisions of Part 1 of Article 9.
  - B.     Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way, and maintenance and repair work on such facilities and equipment. This exemption shall not include any facilities and equipment listed in Par. 2 of Sect. 5-602 or any facilities listed in Par. 5 of Sect. 9-401.
2.     The following structures shall be exempt from the minimum yard requirements set forth in this Ordinance: Telephone booths and pedestals, underground utility equipment, mailboxes, bus shelters, street lights, public bicycle shelters, or any similar structures or devices which in the opinion of the Zoning Administrator are obviously intended to be otherwise located in the public interest, and are not incongruous with the aesthetic standards of the surrounding area.

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**2-105**        **(Deleted by Amendment #99-320, Adopted June 28, 1999, Effective July 1, 1999 at 12:01 AM)**

**2-106**        **Bingo Games and Raffles**

Bingo games and raffles shall be permitted in accordance with the provisions of Article 1.1:1 of Chapter 8 of Title 18.2 of the Code of Virginia.

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### **PART 2      2-200   ZONING DISTRICTS AND BOUNDARIES**

#### **2-201      Zoning Districts**

The unincorporated territory of the County of Fairfax shall be divided into the classes of zoning districts as presented in Articles 3-7 of this Ordinance, which Articles may be referenced as the 'Schedule of Regulations'.

#### **2-202      Zoning Map**

The location and boundaries of the zoning districts established by this Ordinance are as indicated on the map entitled 'Official Zoning Map, Fairfax County, Virginia', a copy of which shall be on file in the Office of the Zoning Administrator. This map shall be presented on section sheets and each sheet properly identified and dated, is hereby adopted as a part of this Ordinance insofar as it indicates such designations, locations and boundaries of zoning districts, and the same shall be deemed to be as much a part of this Ordinance as if the same were fully set forth herein.

#### **2-203      Zoning of Entire Jurisdictional Area**

It is the intent of this Ordinance that the entire unincorporated area of the County of Fairfax, including all land, water areas, and waterways be included in the zoning districts established by this Ordinance. Any area not shown on the Official Zoning Map as being included in any district shall be deemed to be in the R-C District.

All water areas, waterways, alleys, roads, streets, highways, railroads, and other rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zoning district as the property immediately abutting upon same. Where the center line of such described water areas, waterways, or rights-of-way serves as a zoning district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

#### **2-204      Zoning District Boundaries**

In the event that uncertainties exist with respect to the intended boundaries of the various zoning districts as shown on the Official Zoning Map, the following rules shall apply:

1. Where such boundaries are indicated as approximately following the center lines of streets, alleys, railroads or waterways, such lines shall be construed to be such boundaries.
2. When such boundaries are indicated as approximately following the lines of lots or other parcels of record, and scale to be not more than ten (10) feet distant therefrom, such lot or parcel lines shall be deemed to be such boundaries.
3. Where a zoning district boundary divides a parcel of land, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by use of the scale appearing thereon, and scaled to the nearest foot.
4. Any zoning district boundary shown extended to or into any body of water bounding the County shall be deemed to extend straight to the County boundary.

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5. Where uncertainties continue to exist and/or further interpretation is required beyond that presented in the above Paragraphs, the question shall be presented to the Zoning Administrator in accordance with the provisions of Sect. 18-103. Any person aggrieved by such decision made by the Zoning Administrator may appeal that decision in the manner prescribed in Sect. 18-301.



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### **PART 3      2-300   INTERPRETATION OF DISTRICT REGULATIONS**

The Sections that follow present a brief statement of interpretation of the district regulations set forth in Articles 3-7.

#### **2-301      Statements of Purpose and Intent**

The purpose and intent statement presented for each zoning district sets forth the underlying and primary purpose and intent of a given district; although it is not to be concluded that a district is created solely for the fulfillment of a singular stated purpose.

#### **2-302      Permitted Uses**

1. It is the intent of this Ordinance to permit any use, not otherwise prohibited by law, to locate in a specified zoning district(s), either as a permitted use, a special permit use or a special exception use. In the event there is not a particular use listed in the Ordinance that corresponds with the use in question, then it shall be interpreted that the use in the Ordinance having the most similar characteristics as the use in question shall govern. Where uncertainties continue to exist, the question shall be directed to the Zoning Administrator in conformance with the provisions of Sect. 18-103.
2. Notwithstanding that a given use might be construed to qualify as a use permitted in a district, if such use has characteristics more similar to a particular use listed or defined elsewhere in the Ordinance, then it shall be interpreted that the latter listing or definition shall govern. Where uncertainties continue to exist, the question shall be directed to the Zoning Administrator in conformance with the provisions of Sect. 18-103.
3. The term 'permitted uses' represents only those uses which are permitted by right in a given district and does not apply to uses otherwise allowed by special permit or special exception.
4. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied, except for a use that is permitted in the zoning district in which the structure or land is located.
5. No use shall be allowed in any district which is not permitted by the regulations for the district.
6. No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 10.
7. No accessory service use, as defined in Article 20, shall hereafter be established, altered or enlarged unless such accessory service use complies with the provisions of Part 2 of Article 10.
8. No home occupation shall hereafter be established, altered or enlarged unless such home occupation complies with the provisions of Part 3 of Article 10.

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9. No sign shall hereafter be erected, built or displayed and no existing sign shall be moved, remodeled, altered or enlarged unless such sign complies, or will thereafter comply, with the provisions of Article 12.
10. No structure shall hereafter be built or moved, and no structure or land shall hereafter be used or occupied unless the minimum off-street parking and loading spaces required by Article 11 are provided. The off-street parking and loading regulations for any expansion or enlargement of a structure or use already established on the effective date of this Ordinance shall be in accordance with the provisions of Article 11.

### **2-303**

#### **Special Permit Uses**

1. No use of a structure or land that is designated as a special permit use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special permit use in such district, unless a special permit has been approved by the BZA and the use has been established in accordance with the provisions of Article 8.
2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special permit by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.
3. No special permit shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use group available by special permit. Provided, however, that if there is an existing and currently valid special permit for a use located on a lot which is zoned to more than one zoning district and there is an amendment to this Ordinance after the approval of the special permit which allows the use as a permitted use in one of the zoning districts in which the use is located while the requirement for a special permit continues in the other zoning district(s) in which the use is located, the special permit shall remain in full force and effect for the entire property, unless the BZA approves an amendment application to remove the land area from the special permit approval.

### **2-304**

#### **Special Exception Uses**

1. No use of a structure or land that is designated as a special exception use in any zoning district shall hereafter be established, and no existing use shall hereafter be changed to another use that is designated as a special exception use in such district, unless a special exception has been approved by the Board and the use has been established in accordance with the provisions of Article 9.
2. No use existing prior to the effective date of this Ordinance which is allowed within a particular zoning district only by special exception by the provisions of this Ordinance, shall be replaced or enlarged except in accordance with the provisions of Sect. 15-101.
3. No special exception shall be required for a use that is listed as a permitted use in a district, notwithstanding that such use may also be included in a use category available by special exception. Provided, however, that if there is an existing and currently valid special exception for a use located on a lot which is zoned to more than one zoning district and there

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is an amendment to this Ordinance after the approval of the special exception which allows the use as a permitted use in one of the zoning districts in which the use is located while the requirement for a special exception continues in the other zoning district(s) in which the use is located, the special exception shall remain in full force and effect for the entire property, unless the Board approves an amendment application to remove the land area from the special exception approval

### **2-305 Use Limitations**

1. No permitted, special permit or special exception use hereafter established, altered, modified or enlarged pursuant to this Ordinance shall be operated so as to conflict with the use limitations for the zoning district in which such use is located.
2. No permitted, special permit or special exception use already established on the effective date of this Ordinance shall be altered, modified or enlarged so as to conflict with, or further conflict with, the use limitations for the zoning district in which such use is located.

### **2-306 Lot Size Requirements**

1. In this Ordinance, lot size requirements are expressed in terms of:
  - A. Minimum district size.
  - B. Minimum lot area.
  - C. Minimum lot width.
2. In the R-C through R-4 Districts, minimum lot area and lot width requirements are presented for conventional subdivision lots, and cluster subdivision lots which may be allowed in accordance with the provisions of Sections 2-421 and 9-615, as applicable. In addition, in the R-2 through R-30 Districts, minimum lot area and lot width requirements are presented for affordable dwelling unit developments.
3. Where no minimum district size is specified, the minimum lot area and lot width requirements shall define the minimum district size.
4. Where a minimum district size is specified for a given district, no parcel of lesser size shall be so classified in a given location in the County except by the Board acting on its own motion or except as may be permitted by the provisions of Sect. 9-610; provided, however:
  - A. If the district is an I district and if the same classification, or that of a similar nature and intensity, exists in a given location, additional lands may be rezoned to such classification if such lands are adjacent to the zoned district, and if the rezoning of such lands would be in conformance with the adopted comprehensive plan.
  - B. If the district is an R district and if the same classification exists in a given location, additional lands may be rezoned to such classification if such lands are contiguous to the zoned district, and if such lands are in the same ownership, and if the rezoning of such lands would be in conformance with the adopted comprehensive plan.

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5. Unless otherwise specified in this Ordinance, all uses permitted by right or allowed by special permit or special exception shall be subject to the lot size requirements specified for a given district. In the R-C through R-4 Districts, non-residential uses shall be controlled by the provisions presented for conventional subdivision lots, either the average or minimum lot area, whichever is greater, unless other minimum requirements are specified for such uses elsewhere in this Ordinance.
6. No land area which is encumbered by any covenant, easement or interest which would permit the establishment of power distribution facilities, including high power transmission lines, ground transformer stations and natural gas, petroleum or other transmission pipelines, but not ordinary transmission lines located in the public right-of-way or easements which total less than twenty-five (25) feet in width, shall be considered in the computation of minimum lot area or minimum district size.

### 2-307

#### **Bulk Regulations**

1. Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located, and no structure shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which such structure is located.
2. In this Ordinance, bulk regulations are expressed in terms of:
  - A. Maximum building height.
  - B. Minimum yard requirements.
  - C. Minimum angle of bulk plane.
  - D. Maximum floor area ratio.
3. Maximum building height, where specified, shall apply to all structures located in the zoning district except those structures/appurtenances presented in Sect. 506 below, unless a lower maximum height is established for a given use elsewhere in this Ordinance. Maximum building height shall be determined in accordance with the definition, Height, Building set forth in Article 20.
4. Minimum yard requirements shall be as specified for a given zoning district, except as may be qualified by the provisions of Part 4 of this Article or by the provisions of Article 13. The larger of the minimum yard requirements as specified for a given zoning district, or as may be required by the provisions of Part 4 of this Article or by the provisions of Article 13, shall be provided.

The yard requirements shall apply to all buildings and structures as they relate to the lot lines, public streets, and to other buildings, but shall not apply to individual units in single family attached dwellings.

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5. Minimum angle of bulk plane, expressed in degrees, shall be established by a vertical plane at the lot line and a plane drawn at the specified angle from the vertical, the bottom edge of which is tangential to the lot line. The angle shall be measured from that point on the lot line that is established by a line drawn perpendicular to the lot line from the closest point of the proposed principal structure; however, where a wall of the proposed principal structure is parallel to a lot line, the angle shall be measured in like manner from the midpoint of the proposed structure.

In the case of single family detached dwellings without individual lots, groups of single family attached dwellings or multiple family structures, the minimum distance between structures shall be no less than the sum of the minimum required yards for the individual structures, determined as if a lot line were located between the structures drawn perpendicular to the shortest line between them.

Together with other bulk regulations, the minimum angle of bulk plane shall limit the maximum effective building height of any improvement which may be constructed on a lot, and it shall establish the minimum yard requirements that shall be provided relative to the effective height of the building. In contrast to building height, the effective building height shall have application only in those instances where the angle of bulk plane is employed; however, no building shall ever exceed the maximum building height presented for the zoning district in which located. (Reference Illustration 1, Plates 1-3 in Appendix 2)

6. Maximum floor area ratio shall be established in accordance with the definition, Floor Area Ratio, presented in Article 20. Reference Par. 4 of Sect. 308 below for further provisions that may be applicable to floor area ratio.

### 2-308

#### Maximum Density

1. In no instance shall the maximum density specified for a given zoning district be exceeded, except as may be permitted by the provisions of Sect. 405 below, Part 8 of Article 2, or Part 9 of Article 8. Maximum density shall be expressed in number of units or number of persons per acre.
2. Maximum density shall be calculated on the gross area of the lot, except when thirty (30) percent or more of the total area of the lot is comprised of any or all the following features:
  - A. Floodplains and adjacent slopes in excess of fifteen (15) percent grade.
  - B. Quarries.
  - C. Marine clays.
  - D. Existing water bodies, unless a water body is a proposed integral design component of an open space system for a given development, in which case total density credit shall be calculated on such areas.

When thirty (30) percent or more of the total area of the lot is comprised of any or all of the above features, then fifty (50) percent of the maximum permitted density shall be calculated for that area of the lot which exceeds thirty (30) percent of the total area of the lot. The fifty (50) percent density limitation shall apply, notwithstanding that such area may be used

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for open space, parks, schools, rights-of-way, utility easements or other designated uses as may be presented in the following paragraphs.

3. In cases where a given area within a lot is in a major utility easement or right-of-way acquired after the effective date of this Ordinance, no density credit shall be calculated on such area. For the purpose of this Paragraph, a major utility easement or right-of-way shall be one having a width of twenty-five (25) feet or more which is located entirely outside a street right-of-way; provided, however, density credit may be allowed by the Board, by the approval of a special exception pursuant to Part 6 of Article 9, for major utility easements granted after the effective date of this Ordinance when the grantee of such easement is the Board of Supervisors or an authority or other governmental instrumentality, the members of which are appointed by the Board.
4. In cases where a given area within a lot or parcel is needed by the County for a public park, school site, other public facility site, mass transit facility or street improvement related thereto, or public street right-of-way and there are no encumbrances to the title to such area which would interfere with its use, density or intensity (floor area ratio) credit shall be calculated on that area severed for such purposes and shall be granted in accordance with the following:
  - A. There is approval of density/intensity credit prior to the recordation of the dedication or conveyance among the County's land records by:
    - (1) The Board in approving a rezoning or special exception application when dedication or conveyance is part of such application; or
    - (2) The Director in approving a subdivision plat in accordance with Chapter 101 of The Code, or a site plan in accordance with Article 17 of this Ordinance, when dedication or conveyance is part of such subdivision plat or site plan; or
    - (3) The County Executive or designee when such dedication or conveyance is not proposed as part of the approval of a rezoning, special exception, subdivision plat or site plan.
  - B. Such approval shall be based upon the following:
    - (1) The area to be dedicated or conveyed is suitable in location, size, shape, condition and topography for such needed public facility site or use and there are no encumbrances to the title which would interfere with such use; and
    - (2) The area to be dedicated or conveyed is necessary for the public facility site or use and, with the exception of the area dedicated for public streets other than major thoroughfare, is in accordance with the adopted comprehensive plan. Where such proposed public use requires approval under Sect. 15.2-2232 of the Code of Virginia, such approval shall be obtained prior to the granting of credit under this Section; and

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- (3) The area to be dedicated or conveyed will be deeded to the County, and such dedication or conveyance will not be made in exchange for monetary compensation.
- C. Prior to the dedication or conveyance, a plat of dedication showing the land area to be severed, the resultant lot and the appropriate appurtenant density/intensity allocation shall be submitted to and approved by the Director. Such plat and an irrevocable dedication or conveyance to the County for public use shall be of record among the land records of the County. Thereafter, any reallocation of such density/intensity credit shall require the submission to and approval by the Director of a plat, which shall then be recorded among the land records of the County.

Density/intensity credit approved after February 28, 1995 and in accordance with this paragraph shall run in perpetuity with the land remaining after such dedication or conveyance.

5. The provisions of Par. 2 and 3 above shall not be applicable in those areas of the County zoned PRC or in those areas where a planned residential community is delineated on the adopted comprehensive plan on the effective date of this Ordinance. In such areas, maximum density shall be calculated on the gross residential and associated commercial areas.

**2-309**

### **Open Space**

The open space requirements presented for a given zoning district shall be considered as a minimum, and such open space shall be located on the same lot as the primary use or structure, except as specifically provided otherwise in this Ordinance. Open space requirements shall, generally, be presented as an expressed percent of the gross area of the lot.

No part of the open space in any development shall be subsequently reduced below the minimum requirements of this Ordinance, nor be utilized in any manner contrary to the provisions of this Ordinance, except as specifically provided otherwise in this Ordinance. Open space shall not be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director.

The computation of open space areas shall be based on the following rules:

1. In cases where the balance of land not contained in lots and streets is needed by the County for parks, recreational areas, or stream valleys, and such land is suitable in location, size, shape, condition and topography for such needed purposes as determined by the Director, then such land shall be deeded to the County for such purpose. Such land shall be referred to as dedicated open space, and shall be given full credit in satisfying the open space requirement for a given district.
2. In cases where a given area within a lot is needed by the County for a school site, then fifty (50) percent of such area shall be given credit for satisfying the open space requirement of the district in which located.
3. In cases where the balance of land not contained in lots and streets is not needed by the County for such purposes as set forth in Par. 1 and 2 above, then the Director may approve such lands to be conveyed to a nonprofit organization as provided for in Part 7. Such land

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shall be referred to as common open space, and shall be given full credit in satisfying the open space requirement for a given district.

4. In cluster subdivisions, at least seventy-five (75) percent of the minimum required open space or one (1) acre, whichever is less, shall be provided as a contiguous area of open space, which has no dimension less than fifty (50) feet. Deviations from this provision may be permitted with Board of Supervisors' approval of a Category 6 special exception for waiver of open space requirements or appropriate proffered conditions for cluster subdivisions in the R-C, R-E and R-1 Districts and for cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, if it finds that such deviation will further the intent of the Ordinance, the adopted comprehensive plan and other adopted policies. No deviation from this provision shall be permitted for cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater.

In cluster subdivisions wherein the required open space will approximate five (5) acres in area, generally such open space shall be so located and shall have such dimension and topography as to be usable open space.

5. Fifty (50) percent of the area which lies within a major utility easement or right-of-way may be calculated as open space, but only if the remaining rights of the easement or right-of-way are dedicated for recreational or open space use. In no instance, however, shall lands which lie within a major utility easement or right-of-way represent more than thirty (30) percent of the total land area needed to satisfy the open space requirement for a given district. For the purpose of this Paragraph, a major utility easement or right-of-way shall be one having a width of twenty-five (25) feet or more which is located entirely outside a street right-of-way.
6. In no instance shall open space credit be given for lands which are included in or reserved for the right-of-way of any street, or for any mass transit facility, or for any public facility except as qualified in the Paragraphs above.
7. In the administration of these provisions, the Director shall have the authority to determine whether lands do qualify as open space and the authority to determine whether such lands are common open space, dedicated open space, landscaped open space or recreational open space.
8. The Board may waive the open space requirement presented for a given zoning district in accordance with the provisions of Sect. 9-612.

### 2-310

#### **Affordable Dwelling Unit Developments**

In the R-2 through R-30 Districts and P Districts, affordable dwelling unit developments may be required in accordance with the provisions of Part 8 below. Such developments shall be subject to the provisions of Part 8 below and the minimum lot size requirements and bulk regulations set forth for affordable dwelling unit developments in the respective zoning districts. Except as may be qualified, all other provisions of the respective zoning districts shall be applicable to such developments.



## GENERAL REGULATIONS

### **2-311        Statements of Additional Regulations**

Within each zoning district there are additional regulations referenced under this Section heading that are directly applicable to development permitted in the district.

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### **PART 4      2-400   QUALIFYING LOT AND YARD REGULATIONS**

#### **2-401            Limitations on Subdivision of a Lot**

Only a lot that exceeds the minimum provisions of this Ordinance may be subdivided to create more lots, and only then where the resultant lots shall themselves meet such minimum provisions, except for a minor adjustment of lot lines or consolidation of lots as may be permitted under Sect. 405 below.

#### **2-402            Restrictions on Areas Not Included in Lots**

In the event any area of a parcel that is subdivided is not included as a part of an individual lot for a single family dwelling unit, including areas established to meet the open space requirements of this Ordinance, there shall be recorded with the instruments of subdivision, covenants or other restrictions designating the proposed use of such areas.

#### **2-403            (Deleted by Amendment #87-141, Adopted April 27, 1987)**

#### **2-404            (Deleted by Amendment #87-141, Adopted April 27, 1987)**

#### **2-405            Permitted Reduction in Lot Size Requirements for Certain Existing Lots**

1. If a lot was recorded prior to March 1, 1941, or if a lot was recorded prior to the effective date of this Ordinance, and said lot met the requirements of the Zoning Ordinance in effect at the time of recordation, then such lot, either as a single lot or in combination with other such lots pursuant to a Building Permit, may be used for any use permitted in the zoning district in which located under this Ordinance even though the lot(s) does not meet the minimum district size, lot area and/or lot width requirements of the district, provided all other regulations of this Ordinance can be satisfied.

This provision shall not apply to any such lot which, subsequent to the effective date of this Ordinance, is rezoned at the request of the owner or his agent or is subdivided by the owner or his agent, except for:

- A. A subdivision resulting from a voluntary dedication by the owner or a condemnation or acquisition of a portion thereof for public purposes by any governmental agency; or
- B. A subdivision for a minor adjustment of lot lines, which may be permitted by the Director in accordance with Chapter 101 of The Code and the following:
  - (1) Such subdivision shall only be to consolidate land area of contiguous lots, or to rearrange lot lines in order to reallocate land area between contiguous lots such that the reconfigured lots contain either the same lot area as existed prior to the adjustment of the lot lines or a greater area than existed prior to the adjustment of the lot lines which results in a reduced number of lots; and

## FAIRFAX COUNTY ZONING ORDINANCE

- (2) There shall be no additional lots or outlots created, no increase in the maximum density and the resultant lot lines shall not create any new or aggravate any existing noncompliance with regard to minimum lot area, lot width or minimum yard requirements.
- 2. A lot that did not meet the requirements of the Zoning Ordinance in effect at the time of recordation may be used for any use permitted in the zoning district in which located under this Ordinance, even though such lot does not meet the minimum district size, lot area and/or lot width requirements of the district, provided that:
  - A. The lot is described or depicted in a metes and bounds description or on a subdivision plat not approved by the County, which description or plat was recorded among the land records of Fairfax County prior to March 25, 2003; and
  - B. The lot described in the metes and bounds description or on the unapproved plat was identified as a separate lot on the Fairfax County Real Property Identification Map and was taxed as a separate parcel on or before March 25, 2003; and
  - C. The lot contained a principal structure on March 9, 2004 that was:
    - (1) Occupied or had been occupied at any time within five (5) years prior to March 9, 2004; or
    - (2) Under construction pursuant to a Building Permit and a Residential or Non-Residential Use Permit is issued within twelve (12) months after March 9, 2004 and
  - D. Except for the minimum district size, lot area and lot width requirements of the district, all other regulations of this Ordinance shall be satisfied, including but not limited to the bulk and permitted use regulations of the zoning district in which located.

### 2-406

#### Pipestem Lots

- 1. When deemed necessary to achieve more creative planning and preservation of natural property features or to provide for affordable dwelling unit developments, the Director may approve pipestem lots either as a single lot or in a group of lots not to exceed five (5) in number, but only in accordance with the provisions of the Public Facilities Manual and one of the following:
  - A. Affordable dwelling unit developments required under the provisions of Part 8 below.
  - B. Residential cluster subdivisions approved under the provisions of Sections 2-421 or 9-615.
  - C. Notwithstanding the minimum lot width requirements, in the R-5, R-8 and R-12 Districts when shown on an approved proffered generalized development plan.
  - D. In the PDH and PDC Districts when shown on an approved final development plan.

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- E. In the PRC District when shown on an approved PRC plan.
- 2. In addition, where lots with pipestem driveways are created in accordance with the approval of a variance granted by the BZA, said lots will be deemed pipestem lots for the purpose of this Ordinance.

### **2-407 Access to Residential Lots**

All dwelling units shall have access to a dedicated public street, except as provided for by the provisions of Part 3 of Article 11.

### **2-408 (Deleted by Amendment #87-150, Adopted October 19, 1987, Effective October 20, 1987, at 12:01 AM)**

### **2-409 Condominiums, Condominium and Cooperative Conversions**

- 1. Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single family detached or attached dwelling condominium development may be permitted under the Condominium Laws of Virginia subject to the following provisions:
  - A. In single family attached dwelling developments, the minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed.
  - B. Single family detached dwelling developments shall be subject to the following requirements:
    - (1) The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed, and all dwelling units shall be subject to the same requirement to have access to a dedicated public street as single family dwelling units located on lots which result from a subdivision of land, except as provided for by the provisions of Part 3 of Article 11 and Chapter 101 of The Code, The Subdivision Ordinance.
  - C. The location of any community structure, such as a clubhouse or swimming pool, shall be governed by the minimum yard requirements presented for all other structures in the zoning district in which located.
  - D. Accessory structures shall be permitted in general accordance with the provisions of Part 1 of Article 10, as determined by the Zoning Administrator.
  - E. Such developments shall comply with the maximum density and other provisions of the zoning district in which located.
- 2. Any existing structure(s) and its related lot may be converted to a condominium or cooperative, provided the development conforms to the applicable Zoning Ordinance provisions. Prior to conversion, proposed condominium and cooperative conversions which

## FAIRFAX COUNTY ZONING ORDINANCE

are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of Sect. 9-614.

### **2-410 Yard, Open Space Reduction Not Permitted**

Except as may be qualified in the following Sections, no yard or other open space provided on any lot for the purpose of complying with the provisions of this Ordinance shall be reduced so as to be less in width or area than is required by this Ordinance, and no such yard or open space shall be considered as providing any part of a yard or open space for any other lot.

### **2-411 Yard Requirements for Open Land**

If a lot is, or will be, occupied by a permitted use without structures, then the minimum yards that are required for such a lot under the applicable zoning district regulations shall be provided and maintained unless some other provision of this Ordinance requires or permits a different minimum yard; provided, however, front, side and rear yards shall not be required on lots used for agricultural purposes, open public areas or open space; but in no event shall structures associated with such open land uses be located in the required minimum yards.

### **2-412 Permitted Extensions Into Minimum Required Yards**

The features set forth in the following paragraphs may extend into minimum required yards as specified.

For lots in the PDH, PDC, PRC and PRM Districts, the minimum required yard shall be deemed to be one-half of the distance of the yard that has been established by the location of the principal structure on a lot. In other districts where minimum yard requirements are determined by a specified distance between buildings, the lot lines shall be established by a line located between the buildings drawn at the mid-point and perpendicular to the shortest line between them.

1. The following shall apply to any structure:
  - A. Cornices, canopies, awnings, eaves or other such similar features, all of which are at least ten (10) feet above finished ground level, may extend three (3) feet into any minimum required yard but not closer than two (2) feet to any lot line. This provision shall not apply to permanent canopies over gasoline pump islands which have supports located on the pump islands, provided that such canopies may extend into minimum required yards but shall not extend into any required transitional screening areas nor overhang travel lanes, service drives or sidewalks.
  - B. Sills, leaders, belt courses and other similar ornamental features may extend twelve (12) inches into any minimum required yard.
  - C. Open fire balconies, fire escapes, fire towers, uncovered stairs and stoops, air conditioners and heat pumps, none of which are more than ten (10) feet in width, may extend five (5) feet into any minimum required yard, but not closer than five (5) feet to any lot line.

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- D. Bay windows, oriels, and chimneys, none of which are more than ten (10) feet in width, may extend three (3) feet into any minimum required yard, but not closer than five (5) feet to any lot line.
  - E. Carports may extend five (5) feet into any minimum required side yard, but not closer than five (5) feet to any side lot line.
  - F. An accessibility improvement may extend into any minimum required yard.
2. The following shall apply to any deck attached to a single family detached dwelling:
- A. Any open deck with no part of its floor higher than four (4) feet above finished ground level may extend into minimum required yards as follows:
    - (1) Front yard: 6 feet, but not closer than 14 feet to a front lot line and not closer than 5 feet to any side lot line
    - (2) Side yard: 5 feet, but not closer than 5 feet to any side lot line
    - (3) Rear yard: 20 feet, but not closer than 5 feet to any side or rear lot line
  - B. Any open deck with any part of its floor higher than four (4) feet above finished ground level may extend into minimum required yards as follows:
    - (1) Front yard: No extension
    - (2) Side yard: No extension
    - (3) Rear yard: 12 feet, but not closer than 5 feet to any rear lot line and not closer than a distance equal to the minimum required side yard to the side lot line
  - C. Any roofed deck with no part of its floor higher than four (4) feet above finished ground level may extend into minimum required yards as follows:
    - (1) Front yard: No extension
    - (2) Side yard: No extension
    - (3) Rear yard: 12 feet, but not closer than 5 feet to any rear lot line and not closer than a distance equal to the minimum required side yard to the side lot line
3. The following shall apply to any deck attached to a single family attached dwelling:
- A. Any open deck with no part of its floor higher than three (3) feet above finished ground level may extend into minimum required yards as follows:
    - (1) Front yard: No extension

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- (2) Side yard: 5 feet, but not closer than 5 feet to any side lot line
  - (3) Rear yard: To the rear lot line and from side lot line to side lot line, except on lots with a minimum required side yard, not closer than 5 feet to that side lot line
- B. Any open deck with any part of its floor higher than three (3) feet above finished ground level may extend into minimum required yards as follows:
  - (1) Front yard: No extension
  - (2) Side yard: No extension
  - (3) Rear yard: 12 feet, but not closer than 5 feet to the rear lot line. Notwithstanding the above, on lots with rear yards of 17 feet or less, a deck with a depth of 12 feet may be permitted, but not closer than 2 feet to the rear lot line, if such lot line abuts open space or an utility easement, not less than 10 feet in width. In addition, on lots with a minimum required side yard, not closer to that side lot line than a distance equal to such minimum required yard.
- C. Any roofed deck with no part of its floor higher than three (3) feet above finished ground level may extend into minimum required yards as follows:
  - (1) Front yard: No extension
  - (2) Side yard: No extension
  - (3) Rear yard: 12 feet, but not closer than 5 feet to the rear lot line, and on lots with a minimum required side yard, not closer to that side lot line than a distance equal to such minimum required yard
- 4. The following shall apply to any deck attached to a multiple family dwelling, commercial, industrial or institutional structure:
  - A. Any open or roofed deck, not more than ten (10) feet in width and with no part of its floor higher than three (3) feet above finished ground level, may extend six (6) feet into any minimum required yard.
  - B. Any open or roofed deck, not more than ten (10) feet in width with any part of its floor higher than three (3) feet above finished ground level, may extend three (3) feet into any minimum required yard.
- 5. The BZA may approve a special permit to modify the provisions of this Section, but only in accordance with the provisions of Sect. 8-916.



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1. Notwithstanding any other provision of this Ordinance, on any residential lot designed to have reverse frontage along a major thoroughfare, the minimum front yard requirements as set forth for a given zoning district shall be deemed to apply to that yard in front of the principal entrance or containing the approach to the primary building occupying the lot. The opposing yard shall be deemed to be the rear yard and shall be subject to the requirements set forth for such yards unless such requirements are qualified below.
2. A privacy fence or wall may be approved by the Director in the rear and side yards of residential lots designed with reverse frontage, but in no instance shall such a privacy fence or wall be permitted that could obstruct the view of traffic from an intersecting street. To such end, no privacy fence or wall shall be located closer to the right-of-way than a point which would provide at least a sight distance for a vehicle seeking such intersecting street equal to the minimum sight distance acceptable to the Virginia Department of Transportation for the permitting of entrances onto a thoroughfare of the class involved.
3. Accessory uses shall also be permitted in the rear and side yards of residential lots designed with reverse frontage, but only in accordance with the provisions of Part 1 of Article 10, and subject to the qualification on location as presented in Par. 2 above.

### **2-414**

#### **Yard Regulations for Lots Abutting Certain Principal Arterial Highways and Railroad Tracks**

1. Notwithstanding any other provision of this Ordinance, the following minimum distances shall be maintained between all principal buildings and right(s)-of-way of interstate highways and the Dulles Airport Access Road:
  - A. All residential buildings - 200 feet.
  - B. All commercial and industrial buildings - 75 feet.
2. Notwithstanding any other provision of this Ordinance, there shall be a minimum distance of 200 feet between all residential dwellings and railroad tracks.
3. Deviations from the provisions of Par. 1 and 2 above may be permitted with Board of Supervisors' approval of appropriate proffered conditions, if it finds that such deviations will further the intent of the Ordinance, adopted comprehensive plan and other adopted policies.
4. The provisions of Par. 1 and 2 above shall not apply in those instances where a lot has been recorded prior to the effective date of this Ordinance where the enforcement of this regulation would negate the use of the lot in accordance with the provisions of the zoning district in which located.

### **2-415**

#### **Yard Regulations for Lots Having Area in Floodplain**

Except as provided for in Sect. 412 above, no dwelling or portion thereof shall be located closer than fifteen (15) feet in horizontal distance to the edge of a floodplain, except the Director may approve:

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1. The location of dwellings closer than fifteen (15) feet to a permanent water surface of any appropriately designed impoundment; or
2. The location of additions closer than fifteen (15) feet to the edge of a floodplain for single family detached and attached dwellings constructed prior to August 14, 1978. Any decision of the Director shall be based on consideration of at least all of the following factors:
  - A. Type and location of proposed structure
  - B. Nature and extent of any proposed grading or fill
  - C. Impact of proposal on the floodplain on properties upstream and downstream
  - D. Potential of proposal to cause or increase flooding or to jeopardize human life
  - E. Impact of the proposed use on the natural environment and on water quality

For the purpose of this Ordinance, the fifteen (15) feet horizontal distance shall be deemed a minimum required yard. If a dwelling or portion thereof is proposed for location in a floodplain, however, such shall be regulated by the provisions set forth in Part 9 below.

### **2-416 Yard Regulations for Pipestem Lots and Lots Contiguous to Pipestem Driveways**

1. On a pipestem lot, notwithstanding the minimum yard requirements of the district in which located, the front yard shall be a minimum of twenty-five (25) feet. The required twenty-five (25) feet shall be measured from the lot line formed by the pipestem or the edge of the pipestem driveway pavement, whichever is the greater distance. In an affordable dwelling unit development, either twenty-five (25) feet or the minimum front yard requirement of the zoning district in which located shall apply, whichever is the lesser distance.
2. On a lot contiguous to a pipestem driveway serving more than one pipestem lot, in addition to the minimum front yard requirements of the district in which located, the yard contiguous to the pipestem driveway shall also be deemed a minimum required front yard and shall be a minimum of twenty-five (25) feet. The required twenty-five (25) feet shall be measured from the lot line formed by the pipestem or the edge of the pipestem driveway pavement, whichever is the greater distance; provided, however, that such lot shall not be deemed a corner lot. In an affordable dwelling unit development, either twenty-five (25) feet or the minimum front yard requirement of the zoning district in which located shall apply, whichever is the lesser distance.

### **2-417 Reduction in Any Yard Requirement**

A twenty (20) percent reduction of a minimum yard requirement shall be permitted by the Director on any yard reduced in dimension below minimum requirements at any time by condemnation or by acquisition of a portion thereof for public purposes by any governmental agency.

### **2-418 Waiver of Yard Requirements in Selective Areas**

## GENERAL REGULATIONS

Notwithstanding any other provision of this Ordinance and except in a Commercial Revitalization District, the minimum yard requirements and other required distances from lot lines set forth in this Ordinance may be waived for developments located in an area where specific design guidelines have been established in the adopted comprehensive plan, such as in Community Business Center (CBCs) and areas around transit facilities. Such waiver may be approved by the Board, in conjunction with the approval of a rezoning or special exception, or by the Director in approving a site plan, when it is determined that such waiver is in accordance with, and would further implementation of, the adopted comprehensive plan. Yard requirements in a Commercial Revitalization District shall be provided in accordance with the provisions of that district.

### **2-419 Reduction in Minimum Yard Requirements Based on Error in Building Location**

Notwithstanding any other provision of this Ordinance, the Zoning Administrator shall have the authority, as qualified below, to approve a reduction in the minimum yard requirements in the case of any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected. Such a reduction may be approved by the Zoning Administrator in accordance with the following provisions:

1. The Zoning Administrator determines that:
  - A. The error does not exceed ten (10) percent of the measurement that is involved, and
  - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required, and
  - C. Such reduction will not impair the purpose and intent of this Ordinance, and
  - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - E. It will not create an unsafe condition with respect to both other property and public streets, and
  - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner, and
  - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
2. In approving such a reduction under the provisions of this Section, the Zoning Administrator shall allow only a reduction necessary to provide reasonable relief and, as deemed advisable, may prescribe such conditions, to include landscaping and screening measures to assure compliance with the intent of this Ordinance.
3. Upon the approval of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

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4. The Zoning Administrator shall have no power to waive or modify the standards necessary for approval as specified in this Section.
5. If there is an error greater than ten (10) percent of the measurement that is involved, a reduction may be granted by the BZA in accordance with the provisions of Sect. 8-914.

### 2-420

#### **Yard Regulations for Lots Affected by Certain Dedications**

The dedication of land for a service drive, bus turnout and/or bus shelter to the County or to the Virginia Department of Transportation shall not affect the applicable minimum yard requirements. The minimum required yard shall be established from the lot line as it existed prior to such dedication, except in no instance shall a building be erected closer than fifteen (15) feet from the nearest street line. This Section shall not apply to a lot(s) which contains a single family detached dwelling unit.

### 2-421

#### **Cluster Subdivisions**

1. Cluster subdivisions may be permitted in the R-2 District with a minimum district size of two (2.0) acres or greater and may be permitted in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater, with approval by the Director pursuant to Chapter 101 of The Code.
2. Cluster subdivisions may be permitted in the R-C, R-E and R-1 Districts and may be permitted in the R-3 and R-4 Districts which have a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres with special exception approval by the Board pursuant to Sect. 9-615.
3. After July 1, 2004, special exception approval of new cluster subdivisions in the R-2 District and new cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater, shall not be permitted.
4. After July 1, 2004, the Board may approve a proffered rezoning to the R-2 District or a proffered rezoning to a R-3 or R-4 District which has a minimum district size of three and one-half (3.5) acres or greater, for the development of a cluster subdivision without bonus density when the application is for a rezoning to a residential district that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the application property. In conjunction with Board approval of such a proffered rezoning, all minimum district size, lot area, lot width and open space requirements of the district and all applicable cluster subdivision provisions of Chapter 101 of The Code shall be met without modification or waiver. However, the provisions of Sect. 18-204 shall apply to such an approved proffered rezoning.
5. After July 1, 2004, the Board may approve a proffered rezoning to the R-C, R-E or R-1 District or a proffered rezoning to an R-3 or R-4 District which has a minimum district size of two (2) acres but less than three and one-half (3.5) acres, for the development of a cluster subdivision without bonus density when the application is for a rezoning to a residential district that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the application property.

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6. After July 1, 2004, the Board may approve a rezoning to a PDH District for a development consisting, in whole or in part, of single family detached dwellings without bonus density, provided that the application is for rezoning to a PDH District that has a higher permitted maximum density than the permitted maximum density of the existing zoning of the application property or is a rezoning from a district that permits cluster development with Director approval. Rezoning to a PDH District for a development consisting, in whole or in part, of single family detached dwellings shall be prohibited when the existing zoning of the property has the same permitted maximum density as the requested PDH District and such existing zoning permits cluster development with Board approval. In addition, rezoning to a PDH District shall be prohibited, where the application request is from the R-5 District to the PDH-5 District or from the R-8 District to the PDH-8 District for the development, in whole or in part, of single family detached dwellings.
7. Cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts that were approved by proffered rezoning by the Board prior to July 1, 2004, shall continue pursuant to the proffered rezoning approval. Amendments to such proffered rezonings for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts shall be pursued in accordance with the provisions of Sect. 18-204, except that no amendment shall be pursued that permits the cluster subdivision to be enlarged, expanded, increased in density or relocated. Minor modifications to such subdivisions shall be permitted pursuant to Sect. 18-204.
8. Special exceptions for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts that were approved by the Board prior to July 1, 2004, shall remain valid and the cluster subdivision shall continue pursuant to the special exception approval and any development conditions imposed by such approval. Amendments to such special exceptions for cluster subdivisions in the R-C, R-E, R-1, R-2, R-3 and R-4 Districts, shall be pursued in accordance with the provisions of Sections 9-014 and 9-615. Minor modifications to such subdivisions shall be permitted pursuant to Sect. 9-004.
9. Cluster subdivisions in the R-E, R-1, R-2, R-3 and R-4 Districts that were approved administratively by the Director prior to October 20, 1987, or that are subject to the grandfathering provisions adopted pursuant to Zoning Ordinance Amendment ZO 87-150, may continue pursuant to any conditions of such approval. Any modification to such subdivision may be approved by the Director, pursuant to the requirements of this Section and Chapter 101 of The Code.

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### **PART 5      2-500   QUALIFYING USE, STRUCTURE REGULATIONS**

#### **2-501            Limitation on the Number of Dwelling Units on a Lot**

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building. This provision shall not be deemed, however, to preclude multiple family dwelling units as permitted by the provisions of this Ordinance; an accessory use or accessory service use as may be permitted by the provisions of Article 10; an accessory dwelling unit as may be approved by the BZA in accordance with the provisions of Part 9 of Article 8; single family attached dwellings in a rental development; or a condominium development as provided for in Sect. 409 above; or antennas and/or related unmanned equipment structures for a mobile and land based telecommunications facility mounted on a utility distribution pole, utility transmission pole or light/camera standard in accordance with the provisions of Sect. 514 below.

In addition, in all districts, the Board or BZA, in conjunction with the approval of a special exception or special permit use, may allow dwelling units for a proprietor, owner and/or employee and his/her family whose business or employment is directly related to the special exception or special permit use. Such dwelling units may either be located within the same structure as the special exception or special permit use or in separate detached structures on the same lot. If located in separate detached structures, such dwelling units shall meet the applicable bulk regulations for a principal structure set forth in the specific district in which located, and any locational requirements set forth as additional standards for a special exception or special permit use shall not be applicable to detached structures occupied by dwelling units.

#### **2-502            Limitation on the Occupancy of a Dwelling Unit**

A dwelling unit, except an accessory dwelling unit which shall be subject to the provisions of Part 9 of Article 8, may be occupied by not more than one (1) of the following:

1.     One (1) family, which may consist of one (1) person or two (2) or more persons related by blood or marriage with any number of natural children, foster children, step children or adopted children and with not to exceed two (2) roomers or boarders as permitted by Article 10.
2.     Two (2) single parents or guardians with not more than a total of six (6) of their dependent children, including natural children, foster children, step children or adopted children, functioning as a single housekeeping unit.
3.     A group of not more than four (4) persons not necessarily related by blood or marriage functioning as a single housekeeping unit.
4.     A group residential facility.
5.     Any group housekeeping unit which may consist of not more than ten (10) persons as may be approved by the BZA in accordance with the provisions of Part 3 of Article 8.
6.     One (1) person or two (2) persons one of whom shall be elderly and/or disabled as defined in Sect. 8-918, and one (1) or both of whom own the dwelling unit, plus one (1) family, which may consist of one (1) person or two (2) or more persons related by blood or

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marriage, and with any number of natural children, foster children, step children or adopted children.

7. A bed and breakfast, as may be approved by the Board of Supervisors in accordance with the provisions of Part 5 of Article 9.

### 2-503

#### **Sewer and Water Facility Requirements**

1. All structures built hereafter shall meet the requirements for sanitary sewer and water facilities as set forth in Chapters 67, 68 and 101 of The Code, and the Public Facilities Manual.
2. An individual sewage disposal system or private water supply system is an integral part of the principal use and, therefore, shall be located on the same lot as the principal use and within a zoning district which permits the principal use served by the system. Provided, however, in the event an existing system fails, is condemned or acquired for a public purpose, a replacement system may be installed in accordance with the following:
  - A. If a location conforming with the above is not available, a replacement system may be installed at any location acceptable to the Director of the Health Department, either on the lot of the principal use or within a recorded perpetual easement approved by the County Attorney on a contiguous lot; and
  - B. Such a replacement system shall be limited to the size and capacity required to serve the existing principal use, and shall not be further expanded; and
  - C. Such a replacement system shall not be permitted to serve new construction, except as may be provided by Article 15.
3. An individual sewage disposal system or private water supply system shall require the approval of the Director of the Health Department and may be located in any part of any front, side, or rear yard, subject to the approval of the Director of the Health Department. This provision shall not be construed as a basis for a waiver or modification of transitional screening or barriers, which shall be provided in accordance with the requirements of Article 13.
4. Structures either existing as of October 31, 1988, or grandfathered by the Board of Supervisors on October 31, 1988, which do not have an individual sewage disposal system or private water supply system located on the same lot with the structure or within a zoning district which permits the structure may be remodeled or enlarged provided such construction does not result in additional bedrooms, the addition of an appliance or fixture or other rooms or facilities which would require an expansion or enlargement of the nonconforming system.

### 2-504

#### **Use Limitations in Yard Areas**

In any required yard area in any C or I district no goods shall be displayed, offered for sale or stored; no services or activities of any kind that are associated with the primary use of the property shall be performed and no processing or other industrial operation of any kind shall be carried on;



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provided that these limitations shall not be construed to prohibit the provision of required off-street parking spaces in any yard area or the location of service station or service station/mini-mart pump islands and any merchandise displayed thereon, except as may be qualified by other provisions of this Ordinance.

### **2-505 Use Limitations on Corner Lots**

1. On every corner lot within the triangle formed by the street lines of such lot and a line drawn between points on such lines as established below, there shall be no structure or planting of such nature and dimension as to obstruct sight distance other than a post, column or trunk of a tree (but not branches or foliage), which is not greater than one (1) foot in cross section or diameter. Such sight distance shall be maintained between two (2) horizontal planes, one of which is three and one-half (3 ½) feet, and the other ten (10) feet above the established grade of either street or, if no grade has been officially established, then above the average elevation of the existing surface of either street at the center line thereof:
  - A. For a lot having an interior angle of ninety (90) degrees or more at the street corner thereof: Points shall be 30 feet from the property lines extended.
  - B. For a lot having an interior angle of less than ninety (90) degrees at the street corner thereof: Points shall be 30 feet from the property lines extended, plus one (1) foot for every ten (10) degrees or major fraction thereof by which such interior angle is less than ninety (90) degrees.

### **2-506 Structures Excluded From Maximum Height Regulations**

1. The height limitations of this Ordinance shall not apply to accessory structures or uses such as barns, silos, chimneys, spires, cupolas, gables, penthouses, scenery lofts, domes, flagpoles, purple martin birdhouses, flues, monuments, television antennas, water towers, water tanks, smoke-stacks, or other similar roof structures and mechanical appurtenances; provided, however:
  - A. No such structure when located on a building roof shall occupy an area greater than twenty-five (25) percent of the total roof area.
  - B. No such structure shall be used for any purpose other than a use incidental to the main use of the building.
  - C. Air-conditioning units on building roofs shall not be excluded from the maximum height regulations, unless the units are located in a penthouse or are completely screened on all four sides, such penthouse or screening to be an integral architectural design element of the building.
  - D. No such freestanding structure shall be located except in strict accordance with the provisions of Part 1 of Article 10.
2. A parapet wall, cornice or similar projection may exceed the height limit established for a given zoning district by not more than three (3) feet, but such projection shall not extend more than three (3) feet above the roof level of any building.

## FAIRFAX COUNTY ZONING ORDINANCE

### 2-507

#### Limitations on Mobile Homes

1. No mobile home shall be occupied for dwelling purposes unless the same is located in a mobile home park in accordance with all the regulations applying thereto under State law, Part M of Article 3 of this Ordinance or any other County ordinance, except as follows:
  - A. On railroad rights-of-way for the purpose of supplying temporary housing for personnel engaged in emergency repair work, subject to the approval of the Zoning Administrator and the Health Department, for a period not to exceed thirty (30) days.
  - B. As a temporary dwelling as provided for in Part 8 of Article 8.
  - C. On a parcel of 100 acres or more which is used primarily for agriculture, the Zoning Administrator may permit not more than one (1) mobile home as the quarters of a caretaker, watchman or tenant farmer, and his family; provided that such use meets the following conditions:
    - (1) Shall be located only in an R-A, R-P, R-C, R-E or R-1 District.
    - (2) Shall be located not less than 200 feet from any public street, and not less than 100 feet from any abutting property line.
    - (3) Shall be connected to public sewer or an approved septic field, public water or an approved well, and to electricity.
    - (4) Shall be located on the property of the employer, and the mobile home shall be titled by the property owner.
  - D. In conjunction with the approval of a special permit or special exception for a church, private school of general or special education, child care center or nursery school, mobile homes may be allowed as temporary dwellings for faculty, staff or students. Such mobile homes shall be connected to public sewer or an approved septic field, public water or an approved well, and to electricity and shall be subject to the regulations of the zoning district in which located. In addition, the hearing body may impose such conditions and restrictions as it may deem necessary to assure that the use will be compatible with the use of adjacent properties. Such conditions and restrictions may include, but need not be limited to, location, landscaping and screening, and time limitations.
  - E. As a manufactured home on a lot in an R-A District, in accordance with the provisions of Part A of Article 3.
2. Except as qualified in Par. 1 above, it shall be unlawful for any property owner, tenant, lessee or administrator of any real estate in the County to rent, lease or allow any mobile home that is to be used as a dwelling or living quarters to be parked on the land under their supervision unless such land is a legal mobile home park licensed in accordance with the provisions of Chapter 32 of The Code and maintained in accordance with the provisions of this Ordinance.

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**2-508** (Deleted by Amendment #85-122, Adopted September 16, 1985, Effective December 1, 1985)

**2-509 Dwelling Units Displayed for Advertising Purposes**

A dwelling unit displayed for advertising purposes in connection with a residential development may be located in any R district, provided such dwelling unit is located within the recorded subdivision it advertises and such dwelling unit conforms to all of the requirements of this Ordinance, to include the applicable zoning district regulations. Such a dwelling unit may be used for subdivision or apartment sales or rental offices but only in accordance with the provisions of Sect. 8-808.

**2-510 Sales From Vehicles**

The sale or offering for sale of goods or services from any vehicle shall be deemed to be a commercial use and shall be subject to all the regulations prescribed for the zoning district in which the same is conducted, but this regulation shall not be deemed to prohibit any vending from vehicles on public streets that is not otherwise prohibited by law.

**2-511 Limitation on Driveways for Uses In C and I Districts**

A driveway for a use in any C or I district shall be deemed to be an integral component of such use. Such driveways shall not be permitted, either wholly or partly, in any R district unless the C or I district use served by the driveway is also allowed in the R district in which the driveway is to be located; or unless the driveway is approved by the Board in accordance with the provisions of Sect. 9-616. For the purpose of this Section, a travel lane shall not be deemed to be a driveway.

**2-512 Limitations on the Keeping of Animals**

1. The keeping of commonly accepted pets shall be allowed as an accessory use on any lot, provided such pets are for personal use and enjoyment, and not for any commercial purpose. Dogs shall be subject to the provisions of Par. 2 below.
2. The keeping of dogs, except a kennel as permitted by the provisions of Part 6 of Article 8, shall be allowed as an accessory use on any lot in accordance with the following:
  - A. The number of dogs permitted shall be in accordance with the following schedule, except that, in determining the number of dogs allowed, only those dogs six (6) months or older in age shall be counted.

***Number of Dogs***

***Minimum Lot Size***

1 to 2	No requirement
3 to 4	12,500 square feet
5 to 6	20,000 square feet
7 or more	25,000 square feet plus 5,000 square feet for each additional dog above 7

- B. Notwithstanding the above, dogs in numbers greater than those set forth above may be kept on a lot when it can be demonstrated that:

## FAIRFAX COUNTY ZONING ORDINANCE

- (1) Such dogs were kept on the lot prior to October 11, 1977 and have continued to be kept on such lot; or
- (2) Three (3) dogs were kept on a lot of less than 12,500 square feet in size, or five (5) dogs were kept on a lot of 12,500 to 19,999 square feet in size, prior to February 25, 1985.

The provisions of this Paragraph B shall apply only to existing dogs when evidence is submitted which specifically identifies each animal and documents that such animal was present on the lot in accordance with the applicable time frames set forth above.

Nothing in this Ordinance shall be construed to determine the type of license required for dogs under the provisions of Chapter 41 of The Code.

3. The keeping of livestock or domestic fowl shall be allowed as an accessory use on any lot of two (2) acres or more in size. The keeping of such livestock or domestic fowl shall be in accordance with the following:

- A. The number of livestock kept on a given lot shall not exceed the ratio of one (1) animal unit per one (1) acre, with an animal unit identified as follows:

2 head of cattle	= 1 animal unit
5 sheep	= 1 animal unit
3 horses	= 1 animal unit
5 swine	= 1 animal unit
5 goats	= 1 animal unit
5 llamas	= 1 animal unit
5 alpacas	= 1 animal unit

Horses shall include ponies, mules, burros and donkeys. In determining the number of livestock permitted, only horses six (6) months or older in age and cattle, sheep, goats, and swine one (1) year or older in age shall be counted. In addition, in determining the number of livestock permitted, combinations of animals are allowed, provided that the ratio of one (1) animal unit per one (1) acre is maintained.

- B. The number of domestic fowl kept on a given lot shall not exceed the ratio of one (1) bird unit per one (1) acre, with a bird unit identified as follows:

32 chickens	= 1 bird unit
16 ducks	= 1 bird unit
8 turkeys	= 1 bird unit
8 geese	= 1 bird unit

In determining the number of domestic fowl permitted, only fowl six (6) months or older in age shall be counted.

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4. The keeping of honeybees in four (4) beehives or less shall be allowed as an accessory use on any lot. On any lot of 10,000 square feet in size or larger, more than four (4) beehives may be kept, provided there is an additional lot area of 2500 square feet for each hive. In all instances, there shall be one (1) adequate and accessible water source provided on site and located within fifty (50) feet of the beehive(s). In addition, if the landing platform of a hive faces and is within ten (10) feet of any lot line, there shall be a flight path barrier, consisting of a fence, structure or plantings not less than six (6) feet in height, located in front of the hive.
5. The keeping of racing, homing, or exhibition (fancy) pigeons shall be allowed as an accessory use on any lot 10,000 square feet or more in size.
6. All accessory structures associated with the keeping or housing of animals shall be located in accordance with the provisions of Part 1 of Article 10.
7. The BZA may approve a special permit to modify the provisions of Paragraphs 1 through 6 above, but only in accordance with Part 9 of Article 8; provided, however, that a kennel, animal shelter or riding or boarding stable shall be subject to the provisions of Part 6 of Article 8.
8. The keeping of wild, exotic, or vicious animals shall not be allowed except as may be permitted by Chapter 41 of The Code.

### **2-513 Churches, Chapels, Temples, Synagogues, and Other Places of Worship**

The provisions of this Ordinance that relate to churches, chapels, temples, synagogues and other places of worship shall be deemed to refer to the use of the land, buildings and facilities with such uses. These provisions address land use matters only, and do not affect an individual's right to determine and exercise his or her religious beliefs. To this end, the uses of land, buildings and facilities associated with places of worship shall be protected as a matter of right, as the Ordinance read June 14, 1984, prior to the Zoning Administrator's Interpretation Number 52 except as is required for places of worship to be in compliance with Ordinance provisions regarding special permits or special exceptions and in compliance with provisions covering residential, commercial and industrial districts under this Ordinance. Such protected uses include those activities and functions sponsored and administered directly by the place of worship in furtherance of its religion, and other functions and activities as approved by the governing body of the place of worship, subject to the exceptions noted above.

### **2-514 Limitations on Mobile and Land Based Telecommunication Facilities**

Mobile and land based telecommunication facilities shall be permitted on any lot in the following zoning districts when such use is in accordance with the following limitations and when such use is not specifically precluded or regulated by any applicable proffered condition, development condition, special permit or special exception condition which limits the number, type and location of antenna and/or related equipment structure. Further provided, however, such use shall be in substantial conformance with any proffered condition, development condition, special permit or special exception condition. In addition, such uses shall be subject to the requirements of Sect. 15.2-2232 of the Code of Virginia.

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1. Structure or rooftop mounted antennas, with related unmanned equipment cabinets and/or structures:
  - A. Shall be permitted:
    - (1) When located on a multiple family dwelling which is thirty-five (35) feet or greater in height.
    - (2) In all C districts, I-1, I-2, I-3, I-4, I-5, and I-6 Districts, and in the commercial areas of PDH, PDC, PRC and PRM Districts.
    - (3) On an existing transmission tower or monopole in any zoning district.
    - (4) In any zoning district on buildings and structures owned or controlled by a public use or Fairfax County governmental unit.
    - (5) In any residential district on nonresidential buildings and structures which are a Group 3 special permit use, except home child care facilities and group housekeeping units, Group 4 special permit use or Category 1, 2, 3, or 4 special exception use, and which are thirty-five (35) feet or greater in height.
    - (6) In any zoning district when the antennas and related equipment are totally enclosed within an existing nonresidential building or structure.
    - (7) In any zoning district when the antennas are totally enclosed within a new or replacement flagpole, bell tower, clock tower, steeple or similar structure designed to disguise antennas which is no more than twenty (20) feet taller than the rooftop or original structure on which it is placed.
  - B. Antennas allowed under Par. 1A(2) above, which do not exceed the maximum building height limitations, and Par. 1A(6) above shall be permitted in accordance with the applicable zoning district regulations and shall not be subject to the provisions listed below. Antennas allowed under Par. 1A(2) above, which exceed the maximum building height limitations, and Paragraphs 1A(1), 1A(3) through 1A(5) and 1A(7) shall be permitted subject to the provisions listed below.
  - C. Except for omnidirectional or whip antennas completely enclosed within a structure, omnidirectional or whip antennas shall not exceed twenty (20) feet in height or seven (7) inches in diameter and the antennas and their supporting mounts shall be of a material or color which closely matches and blends with the exterior of the building or structure.
  - D. Except for directional or panel antennas completely enclosed within a structure, directional or panel antennas shall not exceed six (6) feet in height or two (2) feet in width and the antennas and their supporting mounts shall be of a material or color which closely matches and blends with the exterior of the building or structure.
  - E. Except for dish antennas completely enclosed within a structure, dish antennas shall not exceed six (6) feet in diameter and when building or rooftop mounted shall be

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fully screened such that the dish antennas are enclosed on all sides by screening walls which are at least as tall as the dish antennas and the associated supporting mounts; provided, however, that dish antennas up to three (3) feet in diameter with supporting mounts that are of a material or color which closely matches and blends with the exterior of the building or structure shall not be required to be screened.

- F. Except for cylinder type antennas completely enclosed within a structure, cylinder type antennas shall not exceed six (6) feet in height or twelve (12) inches in diameter and shall be of a material or color which closely matches and blends with the exterior of the building or structure.
- G. Except for a flag mounted on a flagpole as permitted under the provisions of Par. 2 of Sect. 12-103, no commercial advertising shall be allowed on any antenna, antenna support structure, or related equipment cabinet or structure.
- H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
- I. The related unmanned equipment cabinet or structure for each provider shall not exceed 14 feet in height or a total of 500 square feet of gross floor area when located on the roof of a building, or shall not exceed 12 feet in height or a total of 750 square feet of gross floor area when located on the ground. For multiple family dwellings which are less than sixty-five (65) feet in height, or nonresidential buildings and structures which are less than sixty-five (65) feet in height and which are a Group 3 special permit use, except home child care facilities and group housekeeping units, Group 4 special permit use or Category 1, 2, 3, or 4 special exception use, the related unmanned equipment cabinet or structure, if over seventy (70 ) cubic feet in volume or four (4) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
- J. If the equipment cabinet or structure is located on the roof of a building, the area of the equipment cabinet or structure and other equipment and structures shall not occupy more than twenty-five (25) percent of the roof area in accordance with the provisions of Par. 1A of Sect. 506 above.
- K. Equipment cabinets or structures located on the ground shall meet the minimum yard requirements of the zoning district in which located, except that equipment cabinets or structures associated with antennas mounted on existing monopoles and transmission towers located in a utility transmission easement or street right-of-way shall be located a minimum of twenty (20) feet from the utility transmission easement or street right-of-way line.

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- L. Equipment cabinets or structures located on the ground, and notwithstanding the fence/wall height limitations of Sect. 10-104, shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of at least eight (8) feet and a planted height of at least forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination, except that equipment cabinets or structures associated with antennas mounted on existing monopoles or towers located outside of a utility transmission easement shall be subject to the transitional screening provisions of Article 13 for a light public utility use. If a new equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.
  - M. Associated equipment that is located within an existing principal or accessory structure shall not be subject to the above provisions.
  - N. If any additions, changes or modifications are to be made to monopoles or towers, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
  - O. All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.
2. Antennas mounted on existing or replacement utility distribution and transmission poles (poles) and light/camera standards (standards), with related unmanned equipment cabinets and/or structures, shall be permitted in accordance with the following and may exceed the maximum building height limitations, subject to the following paragraphs:
- A. Omnidirectional/whip antennas not exceeding eight and one-half (8 ½) feet in height or three (3) inches in diameter and panel antennas not exceeding five (5) feet in height or one (1) foot in width shall be permitted on a pole or standard located in any street right-of-way or any utility easement subject to the following and Paragraphs 2D through 2I below:
    - (1) There shall be a maximum of three (3) omnidirectional /whip antennas or four (4) panel antennas.
    - (2) Antennas shall be flush mounted so that the antenna with supporting mount does not extend more than eight and one-half (8 ½) feet above the height of the pole or standard or one (1) foot from the pole or standard.
    - (3) An equipment cabinet or structure not exceeding twenty (20) cubic feet in volume or five (5) feet in height shall be located on or adjacent to the same pole or standard.



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- (4) The height or diameter of a replacement pole or standard shall not exceed the height or diameter of the existing pole or standard
- B. The following antenna types shall be permitted subject to Paragraphs 2C through 2I below:
- (1) Omnidirectional/whip antennas, not exceeding eight and one-half (8 ½) feet in height or three (3) inches in diameter.
  - (2) Directional or panel antennas, not exceeding six (6) feet in height or two (2) feet in width.
  - (3) Cylinder type antennas, not exceeding six (6) feet in height or twelve (12) inches in diameter.
  - (4) Dish antennas, not exceeding two (2) feet in diameter.
- C. The antennas listed in Par. 2B above shall be permitted as follows:
- (1) In districts that are zoned for single family detached or attached dwellings and are residentially developed, vacant or common open space, antennas shall be limited to poles or standards located in the right-of-way of a major thoroughfare or located no more than ten (10) feet from the lot line abutting the major thoroughfare, and the following:
    - (a) When the related equipment cabinet or structure is located on the ground in a front yard or street right-of-way, each provider shall be limited to a cabinet or structure which shall not exceed five (5) feet in height or a total of seventy (70) cubic feet in volume and the cabinet or structure shall be located a minimum of ten (10) feet from all lot lines when located outside of a street right-of-way. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted equipment cabinets or structures shall be screened by a solid fence, wall or berm five (5) feet in height, an evergreen hedge with an ultimate height of five (5) feet and a planted height of forty-eight (48) inches, or a five (5) foot tall fence, wall, berm and/or landscaping combination.

When located on a pole or standard in the front yard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

When the related equipment cabinet or structure is located on the ground in a side or rear yard, each provider shall be limited to a cabinet or structure which shall not exceed 12 feet in height or a total of 200 square feet in gross floor area and the cabinet or structure shall be located a minimum of 10 feet from all lot lines. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches,

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or an eight (8) foot tall fence, wall, berm and/or landscaping combination.

If a new equipment cabinet or structure is added to an existing fenced or screened enclosure that contains ground-mounted telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard in a side or rear yard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

Equipment located within an existing principal or accessory structure shall not be subject to the provisions of this paragraph.

- (b) The height of a replacement pole or standard, including antennas, shall not exceed eighty (80) feet. The diameter of a replacement pole or standard shall not exceed thirty (30) inches.
- (2) In districts that are zoned for multiple family dwellings and are residentially developed with buildings that are thirty-five (35) feet or less in height, vacant or common open space, to include street right-of-ways, the following shall apply:
  - (a) When located on the ground, each provider shall be limited to a related equipment cabinet or structure which shall not exceed 12 feet in height or a total of 500 square feet in gross floor area. In addition, ground-mounted equipment cabinets shall be located a minimum of ten (10) feet from all lot lines when located outside of a street right-of-way. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination. If a new ground-mounted equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

Equipment located within an existing principal or accessory structure shall not be subject to the provisions of this paragraph.
  - (b) The height of a replacement pole or standard, including antennas, shall not exceed 100 feet, provided however, if the height of the existing pole or standard exceeds 100 feet, the replacement pole or standard,

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including antennas, shall be no more than 15 feet higher. The diameter of a replacement pole or standard shall not exceed forty-two (42) inches.

- (3) In commercial or industrial districts; in commercial areas of PDH, PDC, PRC and PRM Districts; in districts zoned for multiple family dwellings and residentially developed with buildings that are greater than thirty-five (35) feet in height; in any zoning district on lots containing: Group 3 special permit uses, except home child care facilities and group housekeeping units, Group 4, 5 or 6 special permit uses, Category 1, 2, 3 or 4 special exception uses, or Category 5 special exception uses of country clubs, golf clubs, commercial golf courses, golf driving ranges, miniature golf ancillary to golf driving ranges, baseball hitting and archery ranges, or kennels and veterinary hospitals ancillary to kennels; or in any zoning district on property owned or controlled by a public use or Fairfax County governmental unit, to include street right-of-ways, the following shall apply:

- (a) When located on the ground, each provider shall be limited to a related equipment cabinet or structure which shall not exceed 12 feet in height or a total of 500 square feet in gross floor area. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened from view of all residentially zoned and developed or residentially zoned and vacant property which abuts or is directly across the street from the structure or cabinet. Such screening shall consist of a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination. If a new ground-mounted equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

Equipment located within an existing principal or accessory structure shall not be subject to the provisions of this paragraph.

- (b) Except for replacement light/camera standards identified in the following paragraph, the height of a replacement pole or standard, including antennas, shall not exceed 100 feet, provided however, if the height of the existing pole or standard exceeds 100 feet, the replacement pole or standard, including antennas, shall be no more than 15 feet higher. The diameter of a replacement pole or standard shall not exceed forty-two (42) inches.

The height of a new or replacement light/camera standard on property used for athletic fields and owned or controlled by a public use or Fairfax County governmental unit, including antennas, shall not

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exceed 125 feet. The diameter of the light/camera standard shall not exceed forty-two (42) inches.

- (4) In the rights-of-way for Interstates 66, 95, 395 and 495, and the Dulles Airport Access/Toll Road, the following shall apply:

- (a) When located on the ground, each provider shall be limited to a related equipment cabinet or structure which shall not exceed 12 feet in height or a total of 500 square feet in gross floor area and shall be located a minimum of 20 feet from the street right-of-way line. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted related equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination. If a new ground-mounted equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for the new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

When located on a pole or standard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

- (b) The height of a replacement pole or standard, including antennas, shall not exceed 100 feet. However, if the height of the existing pole or standard exceeds 100 feet, the replacement pole or standard, including antennas, shall be no more than 15 feet higher. The diameter of a replacement pole or standard shall not exceed forty-two (42) inches.

- (5) In any zoning district, in a utility transmission easement, the following shall apply:

- (a) When located on the ground, each provider shall be limited to a related equipment cabinet or structure which shall not exceed 12 feet in height or a total of 500 square feet in gross floor area and shall be located a minimum of 20 feet from the utility transmission easement line. Notwithstanding the fence/wall height limitations of Sect. 10-104, ground-mounted equipment cabinets or structures shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination. If a new ground-mounted equipment cabinet or structure is added to an existing fenced or screened enclosure that contains telecommunications equipment structures, the screening requirement for a new equipment cabinet or structure may be satisfied with the existing screening, provided that such screening meets the requirements listed above.

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When located on a pole or standard, a maximum of one (1) related equipment cabinet or structure shall be permitted that does not exceed five (5) feet in height or twenty (20) cubic feet in volume.

- (b) The height of a replacement pole or standard, including antennas, shall not exceed eighty (80) feet in zoning districts that are zoned for single family detached or attached dwellings and are residentially developed, vacant or common open space. However if the height of the existing pole or standard exceeds eighty (80) feet, the replacement pole or standard, including antennas shall be no more than fifteen (15) feet higher. The diameter of a replacement pole or standard shall not exceed thirty (30) inches.

In all other instances, the height of a replacement pole or standard, including antennas, shall not exceed 100 feet. However, if the height of the existing pole or standard exceeds 100 feet, the replacement pole or standard, including antennas shall be no more than 15 feet higher. The diameter of a replacement pole or standard shall not exceed forty-two (42) inches.

- D. Except for antennas completely enclosed within a structure, antennas and their supporting mounts shall be of material or color which closely matches and blends with the pole or standard.
  - E. Replacement or new cross bars may be permitted on poles and standards provided the cross bar is the same color as that of the existing pole or standard and the width of the cross bar does not exceed ten (10) feet.
  - F. No commercial advertising or signs shall be allowed on any antenna, antenna support structure, pole, standard, or related equipment cabinet or structure.
  - G. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
  - H. Placement of all antennas on poles and standards including the placement of related equipment shall be subject to approval of the owner of the property on which the pole or standard or related equipment is located.
  - I. All antennas and related equipment cabinets or structures shall be removed within 120 days after such antennas or related equipment cabinets or structures are no longer in use.
3. Monopoles, with related unmanned equipment cabinets and/or structures:

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- A. Shall be permitted as follows and in accordance with the provisions of Paragraphs 3B through 3K below:
  - (1) In all C districts, I-1, I-2, I-3, I-4, I-5 and I-6 Districts, and commercial areas of PDH, PDC, PRC and PRM Districts.
  - (2) In any zoning district in a utility transmission easement which is ninety (90) feet or more in width.
  - (3) In any zoning district on property owned or controlled by a public use or Fairfax County governmental unit.
- B. The height of a monopole:
  - (1) Allowed under Paragraphs 3A(1) or 3A(3) above shall not exceed 199 feet, including antennas.
  - (2) Allowed under Par. 3A(2) above shall not exceed 199 feet, including antennas, except that the height of the monopole when located in a utility transmission easement of 90 feet or more in width may exceed 199 feet, provided however, the height of the monopole shall not exceed the height of the existing transmission towers by more than 30 feet in any circumstance.
- C. Dish antennas attached to monopoles shall not exceed three (3) feet in diameter.
- D. Monopoles shall be subject to the minimum yard requirements, with the exception of the angle of bulk plane, of the zoning district in which located, except that monopoles allowed under Par. 3A(2) above or are located within a street right-of-way shall be located a minimum of twenty (20) feet from the utility transmission easement or street right-of-way line.
- E. The related unmanned equipment cabinet or structure for each provider shall not exceed 12 feet in height or a total of 750 square feet of gross floor area. Such structure shall be located in accordance with the minimum yard requirements of the zoning district in which located, except that equipment cabinets or structures associated with monopoles allowed under Par. 3A(2) above or are located within a street right-of-way shall be located a minimum of twenty (20) feet from the utility transmission easement or street right-of-way line.
- F. Transitional screening shall be provided in accordance with the provisions of Article 13 for a light public utility use, provided, however, and notwithstanding the fence/wall height limitations of Sect. 10-104, associated equipment cabinets or structures for monopoles allowed under Par. 3A(2) above shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination.
- G. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, monopoles shall have a galvanized finish or be painted silver,

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gray or brown, or have an exterior finish manufactured and designed to resemble a tree, flagpole, bell tower, clock tower, windmill or other similar structure designed to disguise antennas.

- H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
  - I. Except for a flag mounted on a flagpole as permitted under the provisions of Par. 2 of Sect. 12-103, no commercial advertising or signs shall be allowed on any monopole, antenna, antenna support structure, or related equipment cabinet or structure.
  - J. If any additions, changes or modifications are to be made to the monopole, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change, or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
  - K. All monopoles and related equipment cabinets or structures shall be removed within 120 days after such monopoles or related equipment cabinets or structures are no longer in use.
4. Towers, with related unmanned equipment cabinets and/or structures, shall be permitted in the I-1, I-2, I-3, I-4, I-5 and I-6 Districts but only when in accordance with the following paragraphs:
- A. The Zoning Administrator and the Department of Information Technology determine that there is not an existing alternative structure which will reasonably meet the engineering and service needs of the telecommunications facility applicant.
  - B. The height of such tower shall not exceed 199 feet, including antennas, except that the height of the tower when located in a utility transmission easement of 90 feet or more in width, may exceed 199 feet, provided however, the height of the tower shall not exceed the height of the existing transmission towers by more than 30 feet in any circumstance.
  - C. Dish antennas attached to the towers shall not exceed six (6) feet in diameter.
  - D. Towers shall be subject to the minimum yard requirements, with the exception of the angle of bulk plane, of the zoning district in which located, except that towers located in a utility transmission easement shall be located a minimum of twenty (20) feet from the utility transmission easement line.

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- E. The related unmanned equipment cabinet or structure for each provider shall not exceed 12 feet in height and a total of 750 square feet of gross floor area. Such structure shall be located in accordance with the minimum yard requirements of the zoning district in which located, except that equipment cabinets or structures located in a utility transmission easement shall be located a minimum of twenty (20) feet from the utility transmission easement line.
  - F. Transitional screening shall be provided in accordance with provisions of Article 13 for a light public utility use, provided, however, and notwithstanding the fence/wall height limitations of Sect. 10-104, equipment cabinets or structures associated with towers located in a utility transmission easement shall be screened by a solid fence, wall or berm eight (8) feet in height, an evergreen hedge with an ultimate height of eight (8) feet and a planted height of forty-eight (48) inches, or an eight (8) foot tall fence, wall, berm and/or landscaping combination.
  - G. Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall have a galvanized finish or be painted silver, gray or brown.
  - H. No signals, lights or illumination shall be permitted on an antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the County, provided, however, that on all antenna structures which exceed 100 feet in height, a steady red marker light shall be installed and operated at all times, unless the Zoning Administrator waives the red marker light requirement upon a determination by the Police Department that such marker light is not necessary for flight safety requirements for police and emergency helicopter operations. All such lights shall be shielded to prevent the downward transmission of light.
  - I. No commercial advertising or signs shall be allowed on any tower, antenna, antenna support structure, or related equipment cabinet or structure.
  - J. If any additions, changes or modifications are to be made to the tower, the Director shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change or modification conforms to structural wind load and all other requirements of the Virginia Uniform Statewide Building Code.
  - K. All towers and related equipment cabinets or structures shall be removed within 120 days after such towers or related equipment cabinets or structures are no longer in use.
5. For the purposes of this section, a Fairfax County governmental unit shall include, but not be limited to, the Fairfax County Water Authority and Redevelopment and Housing Authority.
6. For the purposes of this section, the height of related equipment cabinets or structures shall be measured as follows:
- A. Ground-mounted equipment structure height shall be the vertical distance between the grade and the highest point of the roof for flat roofs; to the deck line of mansard



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roofs; and to the average height between the eaves and the ridge for gable, hip and gambrel roofs.

- B. Rooftop-mounted equipment structure height shall be measured from the rooftop on which the structure is mounted to the highest point of the equipment cabinet or structure.

Mobile and land based telecommunication facilities other than as permitted above shall require the approval of a special exception in those districts where permitted.

### **2-515 Limitations in Major Underground Utility Easements**

1. After June 27, 1995, no land area which is encumbered by any major underground utility easement and which is located outside of a public right-of-way shall be obstructed, restricted, or impeded in any manner by any new structure, building, plantings, stockpiling of material or use except for the following when approved by the Director. Such approval may include the imposition by the Director of conditions related to maintaining the structural integrity of the transmission pipeline.
  - A. Transmission pipelines and appurtenant structures and facilities, to include temporary structures used in conjunction with the maintenance and/or repair of the underground utility lines.
  - B. Aboveground utility crossings and underground crossings of franchised cable television lines and crossings of underground utilities including, but not limited to storm drains, water and sanitary sewer lines, liquid petroleum lines, gas lines, electric and telephone cables, as specified in Par. 1A of Sect. 104 above.
  - C. Erosion and sediment controls.
  - D. Temporary equipment crossings provided transmission pipelines are adequately protected from any adverse impacts caused by such crossing.
  - E. Crossings of railroad tracks, private streets, driveways, trails, sidewalks and public rights-of-way provided such facilities will not adversely impact the structural integrity of transmission pipelines.
  - F. Trails as shown on the adopted comprehensive plan provided such trails will not adversely impact the structural integrity of transmission pipelines.
  - G. Recreational facilities limited to open play areas and athletic fields not containing any permanent structures other than fencing, backstops, benches, bleachers, scoreboards and other similar accessory structures, provided that under no circumstances shall mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided such facilities shall not adversely impact the structural integrity of transmission pipelines.

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- H. Off-street surface parking facilities in accordance with the provisions of the Public Facilities Manual provided such facilities will not adversely impact the structural integrity of transmission pipelines.
- I. Garden or landscaping with low growing plants or ornamental type shrubbery, with no vegetation having a maximum expected height of more than four (4) feet, provided that under no circumstances shall mechanical equipment of any type be permitted to be used in the planting or removal of such vegetation.
- J. Accessory structures such as playground equipment, children's playhouses, doghouses, fences, storage structures and other similar structures which do not require approval of a Building Permit, provided that under no circumstances shall mechanical equipment of any type be permitted to be used in the installation or removal of such structures and further provided such structures shall not adversely impact the structural integrity of transmission pipelines.

In addition, any vegetation required by this Ordinance shall be planted and maintained in such a manner that will not obstruct, restrict or impede any major underground utility easement.

- 2. This Section shall not be construed to restrict measures necessary to identify the location of a transmission pipeline facility as required by the County or to restrict an operator or agent of a transmission pipeline facility from providing maintenance or emergency service to the underground facilities.

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### **PART 6      2-600   LAND REGULATIONS**

#### **2-601      Limitation on the Removal and Addition of Soil**

No soil shall be removed from or added to any lot in any zoning district except in accordance with one of the following provisions:

1. Sod and soil may be removed from or added to any lot to a depth of not more than eighteen (18) inches but only in an area not exceeding 2500 square feet; provided, however, that this provision shall not apply to the temporary storage of top soil by plant nurseries and further provided that any sod and soil removal or addition within a major underground utility easement shall only be permitted in accordance with Sect. 515 above. In a floodplain, sod and soil may be removed in accordance with this paragraph, however, the addition of sod and soil shall only be permitted in accordance with the provisions of Part 9 below, or
2. Removal, dumping, filling, or excavation necessary for construction shall be permitted when such is in accordance with an approved site plan or approved plans and profiles for a subdivision; or
3. Grading of land shall be permitted in accordance with a grading plan approved by the Director. The Director shall determine that the amount of soil removal or fill and proposed grading is necessary for the establishment of a use permitted in the zoning district in which located, and that the grading plan shall provide for even finished grades which meet adjacent properties' grades and do not substantially alter natural drainage, and which plans include siltation and erosion control measures in conformance with the provisions of Chapter 104 of The Code; or
4. Any other grading, excavating, mining, burrowing and/or filling of land not listed above shall be permitted only in accordance with the provisions of Part 1 of Article 8 or the approval of a landfill in accordance with the provisions of Part 2 of Article 9.

#### **2-602      Drainage, Floodplains, Wetlands and Resource Protection Areas**

1. Notwithstanding the provisions of Sect. 601 above, no building shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of such land, taking into account land development that may take place in the vicinity under the provisions of this Ordinance, without providing adequate drainage in connection therewith as determined by the Director in accordance with the provisions of the Public Facilities Manual.
2. There shall be no filling, change of contours or establishment of any use in any floodplain except as may be permitted by the provisions of Par. 1 of Sect. 601 above, or Part 9 below.
3. There shall be no filling, change of contours, or establishment of any use or activity in any wetlands except as may be permitted by the provisions of Chapter 116 of The Code.

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4. There shall be no filling, change of contours, or establishment of any use or activity in any Resource Protection Area except as may be permitted by the provisions of Chapter 118 of The Code.
5. Notwithstanding the above, no building shall be erected, no filling or cutting, change in contours or establishment of any use or activity shall be permitted within a major underground utility easement except as may be approved by the Director in accordance with Sect. 515 above.

### **2-603 Erosion and Sedimentation Control Regulations**

For the purpose of alleviating harmful and/or damaging effects of on-site erosion and siltation on neighboring downhill and/or downstream properties during and after development, adequate controls of erosion and sedimentation of both a temporary and permanent nature shall be provided by the property owner during all phases of clearing, filling, grading and construction. Plans and specifications for such controls shall be submitted to and approved by the Director in accordance with the provisions of the Public Facilities Manual.

### **2-604 Pro-Rata Share of Costs for Drainage Facilities**

A subdivider or developer of land shall be required to pay a pro-rata share of the cost of providing reasonable and necessary drainage facilities in accordance with the provisions of the Public Facilities Manual.

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### **PART 7      2-700    COMMON OPEN SPACE AND COMMON IMPROVEMENT REGULATIONS**

#### **2-701      Applicability**

The regulations set forth in this Part shall apply to the following features in all residential developments where such features are proposed to be dedicated or conveyed for public use or are to be held in common ownership by the persons residing in the development:

1. All lands in common open space, not a part of individual lots, designed for the mutual benefit of a group of persons residing in the development, where such lands are not to be dedicated or conveyed for public use, whether or not such lands are required by the provisions of this Ordinance, and
2. All private streets, driveways, parking bays, uses, facilities, and buildings or portions thereof, as may be provided for the common use, benefit and/or enjoyment of the occupants of the development, whether or not such improvements are required by the provisions of this Ordinance.
3. Where a condominium development is proposed, such shall be established and regulated in strict accordance with the provisions of the Condominium Laws of Virginia.
4. All lands to be deeded or conveyed for public use.

#### **2-702      General Requirements**

All lands and improvements set forth in Par. 1, 2, and 3 of Sect. 701 above shall be established and maintained in accordance with the following requirements:

1. The applicant or developer shall provide for and establish a nonprofit organization or other legal entity under the laws of Virginia for the ownership, care and maintenance of all such lands and improvements.
2. Such organization shall be created by covenants and restrictions running with the land and shall be composed of all persons having ownership within the development. Such organization shall be responsible for the perpetuation, maintenance, and function of all common lands, uses and facilities.
3. All lands and improvements shall be described and identified as to location, size, use and control in a restrictive covenant, and such covenant shall set forth the method of assessment for the maintenance of such land. These restrictive covenants shall be written so as to run with the land and be in full force and effect for a period of not less than twenty (20) years, and shall be automatically extended for successive periods of twenty (20) years unless terminated in a manner set forth hereinafter. These covenants shall become part of the deed to each lot or parcel within the development.
4. Such restrictive covenant and organization shall continue in effect so as to control the availability of the facilities and land thereby provided, to maintain the land and facilities for their intended function, and to protect the development from additional and unplanned

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densities of use. Such organization shall not be dissolved nor shall such organization dispose of any common open space, by sale or otherwise, except to an organization conceived and organized to own and maintain the common open space, without first offering to dedicate the same to the County or other appropriate governmental agency.

5. No lands in common open space shall be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director. However, routine maintenance of common open space limited to the removal of dead, diseased, dying or hazardous trees or shrubbery; removal and replacement of dead landscaping and screening materials; installation of supplemental plantings; removal of noxious vegetation such as poison ivy or greenbrier; lawn care and maintenance; or repair and replacement of picnic and play equipment; or similar routine maintenance shall be permitted without approval of the Director; provided such maintenance is allowed under any applicable proffered conditions, applicable conditions of special permits or special exceptions or other applicable laws and ordinances and further provided that such common open space does not contain areas used to comply with Best Management Practices such as floodplains and conservation easements.
6. If the Director shall determine that the public interest requires assurance as to adequate maintenance of common open space areas and improvements, the Director may require that the covenants creating such organization shall provide that in the event the organization established to own and maintain such common open space/improvements, or any successor organization, shall at any time after establishment of the development fail to maintain the common open space/improvements in reasonable order and condition in accordance with the approved plans, the County may serve notice in writing upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the common open space/improvements in reasonable condition, and said notice shall contain a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of a public hearing thereon which shall be held within twenty (20) days of the notice.
7. At such hearing the County may modify the terms of the original notice as to the deficiencies and may grant an extension of time within which they shall be cured.
8. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within said thirty (30) days or any extension thereof, the County, in order to preserve the taxable values of the properties within the development and to prevent the common open space/improvements from becoming a public nuisance, may enter upon said common open space and maintain the same for one (1) year.
9. Said entry and maintenance shall not vest in the public any rights to use the common open space/improvements except when the same is voluntarily dedicated to the public by the owners.
10. Before the expiration of said one (1) year period, the County shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space/improvements, call a public hearing upon notice in writing to such organization or to the residents of such development, to be held by the Board, at which hearing the organization shall show cause why such maintenance by the County shall not, at the election of the Board, continue for a succeeding one (1) year period.

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11. If the Board shall determine that such organization is ready and able to maintain the common open space/improvements in reasonable condition, the County shall cease to maintain the common open space/improvements at the end of said one (1) year period.
12. If the Board shall determine that such organization is not ready and able to maintain the common open space/improvements in a reasonable condition, the County may, in its discretion, continue to maintain the common open space/improvements during the next succeeding year, and subject to a similar hearing and determination in each year thereafter.
13. The covenants creating such organization shall further provide that the cost of such maintenance by the County shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space/improvements, and shall become a charge on said properties, and such charge shall be paid by the owners of said properties within thirty (30) days after receipt of a statement therefor.
14. Notwithstanding the above provisions of this Part, an adjacent development may join the organization for purposes of utilizing the open space and improvements thereon pursuant to Sect. 16-404.

### **2-703**

#### **Submission Requirements**

1. Prior to the dedication or conveyance of those features described in Sections 701 and 702 above, the following documents shall be submitted to and approved by the County.
  - A. The articles of incorporation or other organizational documentation for the nonprofit organization.
  - B. The by-laws of the nonprofit organization.
  - C. The covenants or restrictions related to the use of common property, including the system and amounts of assessments for perpetuation and maintenance.
  - D. A fiscal program for a minimum of ten (10) years, including adequate reserve funds for the maintenance and care of all lands, streets, facilities, and uses under the purview of the nonprofit organization.
  - E. A document granting the right of entry upon such common property to the County law enforcement officers, rescue squad personnel, and the fire fighting personnel while in the pursuit of their duties; and, in the case of private streets and common driveways, permitting the enforcement of cleared emergency vehicle access.
  - F. A complete listing of all land, buildings, equipment, facilities, and other holdings of the nonprofit organization, as such is proposed, and a complete description of each.
  - G. A recommended time schedule for the maintenance of major facilities, including streets, street signs, pools, sidewalks, parking areas and buildings.

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- H. A copy of the proposed notice that will be given to prospective buyers regarding the organization, assessments and fiscal program.
  - I. A copy of the Deed of Conveyance and a Title Certificate or, at the discretion of the Director, a commitment for a policy of title insurance issued by an insurance company authorized to do business in the Commonwealth of Virginia, assuring unencumbered title for all lands proposed to be conveyed to the County, other appropriate governmental agency, or other organization, including the nonprofit organization.
2. The documents set forth in Par. 1 shall be reviewed and approved by the Director and the County Attorney, and such approval shall be obtained before any final plat is recorded or final site plan is approved. Such documents, once approved, shall become part of the recorded subdivision plat or approved site plan.

**2-704 (Deleted by Amendment #97-296, Adopted and Effective April 7, 1997)**

### **2-705 County Not Responsible for Maintenance**

Except as provided for in Par. 8 of Sect. 702 above, the County shall not be responsible for the maintenance of any of the common open space and common improvements required by this Ordinance. Where the County becomes the owner of such open space and improvements, under the provisions of Par. 4 of Sect. 702 above, there shall accrue to the County or other appropriate governmental agency no responsibility except to the general public of the entire County.



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### **PART 8      2-800   AFFORDABLE DWELLING UNIT PROGRAM**

#### **2-801           Purpose and Intent**

The Affordable Dwelling Unit Program is established to assist in the provision of affordable housing for persons of low and moderate income. The program is designed to promote a full range of housing choices and to require the construction and continued existence of dwelling units affordable to households whose income is seventy (70) percent or less of the median income for the Washington Standard Metropolitan Statistical Area. An affordable dwelling unit shall mean the rental and/or for sale dwelling unit for which the rental and/or sales price is controlled pursuant to the provisions of this Part. For all affordable dwelling unit developments, where the dwelling unit type for the affordable dwelling unit is different from that of the market rate units, the affordable dwelling units should be integrated within the developments to the extent feasible, based on building and development design. In developments where the affordable dwelling units are provided in a dwelling unit type which is the same as the market rate dwelling units, the affordable dwelling units should be dispersed among the market rate dwelling units.

#### **2-802           Applicability**

1.    The requirements of the Affordable Dwelling Unit Program shall apply to any site or portion thereof at one location which is the subject of an application for rezoning or special exception or site plan or subdivision plat submission which yields, as submitted by the applicant, fifty (50) or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer service area, except as may be exempt under the provisions of Sect. 803 below. For purposes of this Ordinance, "site or portion thereof at one location" shall include all adjacent undeveloped land of the property owner and/or applicant, the property lines of which are contiguous or nearly contiguous at any point, or the property lines of which are separated only by a public or private street, road, highway or utility right-of-way or other public or private right-of-way at any point, or separated only by other land of the owner and/or applicant, which separating land is not subject to the requirements of this Part.

Sites or portions thereof at one location shall include all land under common ownership and/or control by the owner and/or applicant, including, but not limited to, land owned and/or controlled by separate partnerships, land trusts, or corporations in which the owner and/or applicant (to include members of the owner and/or applicant's immediate family) is a partner, beneficiary, or is an owner of one (1) percent or more of the stock, and other such forms of business entities. Immediate family members shall include the owner and/or applicant's spouse, children and parents. However, in instances in which a lending institution, such as a pension fund, bank, savings and loan, insurance company or similar entity, has acquired, or acquires an equity interest by virtue of its agreement to provide financing, such equity interest shall not be considered in making determinations of applicability.

2.    At the time of application for rezoning or special exception and at the time of site plan or subdivision plat submission, the owner and/or applicant shall submit an affidavit which shall include:
  - A.    The names of the owners of each parcel of the sites or portions thereof, as such terms are defined in Par. 1 above.

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- B. The Fairfax County Property Identification Map Number, parcel size and zoning district classification for each parcel which is part of the site or portion thereof.
- 3. An owner and/or applicant shall not avoid the requirements of this Part by submitting piecemeal applications for rezoning or special exception or piecemeal site plan or subdivision plat submissions for less than fifty (50) dwelling units at any one time. However, an owner and/or applicant may submit a site plan or subdivision plat for less than fifty (50) dwelling units if the owner and/or applicant agrees in writing that the next application or submission for the site or portion thereof shall meet the requirements of this Part when the total number of dwelling units has reached fifty (50) or more. This written statement shall be recorded among the Fairfax County land records and shall be indexed in the names of all owners of the site or portion thereof, as such terms are defined in Par. 1 above.
  - 4. The County shall process site plans or subdivision plats proposing the development or construction of affordable dwelling units within 280 days from the receipt thereof, provided that such plans and plats substantially comply with all ordinance requirements when submitted. The calculation of the review period shall include only that time the plans or plats are in for County review, and shall not include such time as may be required for revisions or modifications in order to comply with ordinance requirements.
  - 5. Affordable dwelling units may be provided, at the developer's option, in any residential development in the R-2 through R-30 and P Districts which is not required to provide affordable dwelling units pursuant to the provisions of this Part. Such development shall be subject to the applicable zoning district regulations for affordable dwelling unit developments and shall be in accordance with the following:
    - A. For single family detached and single family attached dwelling unit developments, there may be a potential density bonus of up to twenty (20) percent, provided that not less than twelve and one-half (12.5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.
    - B. For multiple family dwelling unit structures that do not have an elevator, or have an elevator and are three (3) stories or less in height, there may be a potential density bonus for the development consisting of such structures of up to ten (10) percent, provided that not less than six and one-quarter (6.25) percent of the total number of dwelling units are provided as affordable dwelling units, or a potential density bonus for the development consisting of such structures from greater than ten (10) percent up to twenty (20) percent, provided that not less than twelve and one-half (12.5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.
    - C. For multiple family dwelling unit structures that have an elevator and are four (4) stories or more in height, there may be a potential density bonus for the development consisting of such structures of up to seventeen (17) percent, provided that not less than six and one-quarter (6.25) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part for multiple family dwelling developments with fifty (50) percent or less of the required parking provided in parking structures. For such multiple family developments with

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more than fifty (50) percent of the required parking provided in parking structures, there may be a potential density bonus of up to seventeen (17) percent, provided that not less than five (5) percent of the total number of dwelling units are provided as affordable dwelling units, subject to the provisions of this Part.

- D. The affordable dwelling units shall be of the same dwelling unit type as the market rate units constructed on the site.
  - E. The Affordable Dwelling Unit Advisory Board shall have no authority to modify the percentage of affordable dwelling units required under this provision, nor to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site.
6. For independent living facility special exceptions, affordable dwelling units shall be required in accordance with Sect. 9-306 and the administration of such units shall be subject to the provisions of this Part.

### 2-803

#### **Developments Exempt From the Affordable Dwelling Unit Program**

Notwithstanding the provisions of Sect. 802 above, the requirements of this Part shall not apply to the following:

- 1. Any multiple family dwelling unit structure which is constructed of Building Construction Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Code (VUSBC).
- 2. Special exception applications or rezoning applications or amendments thereto approved before July 31, 1990 or rezoning applications or amendments thereto approved before January 31, 2004 for elevator multiple family dwelling unit structures that are four (4) stories or more in height and constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), which either:
  - A. Include a proffered or approved generalized, conceptual, final development plan or development plan, or special exception plat which contains a lot layout; or
  - B. Include a proffered or approved total maximum number of dwelling units or FAR; or
  - C. Include a proffered or approved unit yield per acre less than the number of units per acre otherwise permitted by the applicable zoning district regulations; or
  - D. Fully satisfy the provisions of Sect. 816 below.
- 3. Proffered condition amendment, development plan amendment, and special exception amendment applications filed after July 31, 1990 which deal exclusively with issues of building relocation, ingress/egress, storm water drainage, or other engineering or public facilities issues, or the preservation of historic structures, child care facilities or changes in the size of units, a reduction in the number of units, a change in dwelling unit type which proposes no increase in density over the previously approved density or which request the addition of a special exception or special permit use. In addition, notwithstanding the definition of "site or portion thereof at one location" set forth in Par. 1 of Sect. 802 above,

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proffered condition amendment, development plan amendment and special exception amendment applications filed after 12:01 AM March 31, 1998, which propose to add land area to a previously exempt development, provided, however, that such additional land area shall be subject to the provisions of this Part. The land area subject to the original zoning or special exception for which an amendment is sought shall remain in substantial conformance with such approved zoning or special exception.

4. Conversion to condominium of developments which were built pursuant to site plans filed or preliminary subdivision plats approved on or before July 31, 1990.
5. Site plans filed and preliminary subdivision plats approved on or before July 31, 1990; provided such site plan is approved within twenty-four (24) months of the return of the initial submission to the applicant or agent, a building permit(s) for the structure(s) shown on the approved site plan is issued in accordance with Par. 1 of Sect. 17-110 of this Ordinance and provided further that the structure(s) is in fact constructed in accordance with such building permit(s); and provided such preliminary plat is approved and a final plat is approved and recorded in accordance with the provisions of Chapter 101 of The Code, Subdivision Ordinance.

Site plans filed or preliminary subdivision plats approved on or before July 31, 1990 for developments not exempt under Paragraphs 2, 3 or 4 above may, at the owner's option, be revised or resubmitted, as the case may be, in order to comply with the requirements of this Part. Such revision or resubmission shall be processed expeditiously by the Department of Public Works and Environmental Services in accordance with the provisions of Par. 4 of Sect. 802 above.

6. Site plans for elevator multiple family dwelling unit structures that are four (4) stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC) filed on or before January 31, 2004, provided such site plan is approved within twelve (12) months of the return of the initial submission to the applicant or agent, the site plan remains valid, a building permit(s) for the structure(s) shown on the approved site plan is issued and provided further that the structure(s) is in fact constructed in accordance with such building permit(s).

### 2-804

#### **Affordable Dwelling Unit Adjuster**

1. For rezoning and special exception applications approved after 12:01 AM March 31, 1998, or for proffered rezoning applications approved prior to 12:01 AM March 31, 1998, which specifically provide for the applicability of an amendment to this Part:
  - A. Which request approval of single family detached dwelling units or single family attached dwelling units, the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by twenty (20) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. The provision of affordable dwellings units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provisions of affordable housing. For the purposes of administration of this Part, where the

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adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below.

- B. Which request approval of non-elevator multiple family dwelling unit structures; or elevator multiple family dwelling unit structures which are three (3) stories or less in height, the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by ten (10) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. However, at the applicant's option, the upper end of the density range set forth in the adopted comprehensive plan shall be increased by twenty (20) percent for purposes of calculating maximum potential density. The provision of affordable dwellings units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provision of affordable housing. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below.
2. Affordable dwelling units required pursuant to Par. 1 above shall be provided in accordance with the following:
- A. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is at or below the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling units shall be required and the applicable zoning district regulations for affordable dwelling unit developments shall not apply.
  - B. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plan is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units shall be provided in accordance with the following formulas:

- (1) For developments for which a 20% bonus has been applied:

$$\frac{\text{Approved Density minus Low End of Density Range}}{\{\text{High End of Adjusted Density Range minus Low End of Adjusted Density Range}\}} \times 12.5$$

- (2) For multiple family dwelling unit developments for which a 10% density bonus has been applied and for the multiple family dwelling unit component of a mixed unit development for which a 10% density bonus has been applied:

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### Approved Density minus Low End of Density Range

{High End of Adjusted Density Range minus Low End of Adjusted Density Range} X 6.25

In no event shall the requirement for affordable dwelling units exceed 6.25% for those developments for which a 10% increase in density has been applied to the density range specified in the adopted comprehensive plan or 12.5% for those developments for which a 20% increase in density has been applied to the density range specified in the adopted comprehensive plan.

Examples of the foregoing sliding scale affordable dwelling unit requirement and calculation of the affordable dwelling unit requirement for mixed unit developments where a 10% density increase has been applied to the multiple family component are provided at the end of this Part and should be used for illustrative purposes only.

Description of terms used in affordable dwelling unit formulas:

Approved Density = the dwelling units per acre approved by the Board of Supervisors or as shown on the approved site plan or subdivision plat.

Low End of Density Range = the lower limit of the density range specified in the adopted comprehensive plan for the development site or as determined in accordance with Par. 8 below prior to application of the permitted density increase for affordable dwelling unit developments.

High End of Adjusted Density = the upper limit of the adopted comprehensive plan density range determined after application of the permitted density increase for affordable dwelling unit developments.

Low End of Adjusted Density = the lower limit of the adopted comprehensive plan density range determined after application of the permitted density increase for affordable dwelling unit developments.

The numbers 5.0, 6.25 and 12.5 in applicable formulas represent absolute numbers, not percentages.

3. For developments which were rezoned prior to July 31, 1990:
  - A. For single family dwelling unit developments which are not otherwise exempt under Sect. 803 above, the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to twenty (20) percent. Provided that a twenty (20) percent increase in density is obtained, not less than twelve and one-half (12.5) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event of density increase of less than twenty (20) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 20 to 12.5 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

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- B. For developments consisting of non-elevator multiple family dwelling unit structures, or elevator multiple family dwelling unit structures which are three (3) stories or less in height, which are not otherwise exempt under Sect. 803 above, the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to twenty (20) percent.

If a twenty (20) percent increase in density is obtained, not less than twelve and one-half (12.5) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than twenty (20) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 20 to 12.5 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

4. For rezoning applications approved after January 31, 2004 which request approval of elevator multiple family dwelling unit structures, that are four (4) stories or more in height and are to be constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), the lower and upper end of the density range set forth in the adopted comprehensive plan applicable to the application property shall be increased by seventeen (17) percent for purposes of calculating the potential density which may be approved by the Board of Supervisors. The provision of affordable dwelling units or, in the case of a modification approved by the ADU Advisory Board, the conveyance of land, contribution to the Fairfax County Housing Trust Fund or combination thereof, as provided for in Par. 3 of Sect. 815 below, shall satisfy the development criteria in the adopted comprehensive plan which relate to the provision of affordable housing. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the density range shall be determined in accordance with Par. 8 below. Affordable dwelling units required pursuant to this paragraph shall be provided in accordance with the following:

- A. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is at or below the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling developments, then no affordable dwelling units shall be required and the applicable zoning district regulations for affordable dwelling unit developments shall not apply.
- B. If the total number of dwelling units approved by the Board of Supervisors or if the total number of dwelling units shown on the subsequent site plan or subdivision plat is less than the total number approved by the Board, provides for a density which is above the low end of the density range specified in the adopted comprehensive plan prior to application of the bonus density permitted for affordable dwelling unit developments, affordable dwelling units for which the rental and/or sales price is controlled pursuant to the provisions of this Part shall be provided in accordance with the following formulas:

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- (1) For developments with fifty (50) percent or less of the required parking for multiple family dwelling units provided in the above- or below-surface structures:

$$\frac{\text{Approved Density minus Low End of Density Range}}{\{\text{High End of Adjusted Density Range minus Low End of Adjusted Density Range}\}} \quad X \quad 6.25$$

- (2) For developments with more than fifty (50) percent of the required parking for multiple family dwelling units provided in above- or below-surface structures:

$$\frac{\text{Approved Density minus Low End of Density Range}}{\{\text{High End of Adjusted Density Range minus Low End of Adjusted Density Range}\}} \quad X \quad 5.0$$

The terms uses in these formulas shall be as defined in Par. 2 above. In no event shall the requirement for affordable dwelling units exceed either 6.25% in accordance with Par. 4B(1) above or 5.0% in accordance with Par. 4B(2) above, as applicable, for those development in which a 17% increase in density has been applied to the density range specified in the adopted comprehensive plan.

- C. If the provision of affordable dwelling units and bonus market rate dwelling units requires a change from Building Construction Type 5 to Types 1, 2, 3 or 4, as specified in the Virginia Uniform Statewide Building Codes (VUSBC), as demonstrated by the applicant and confirmed by the County, then the affordable dwelling unit provisions shall not be applicable.
5. For developments, which were rezoned prior to January 31, 2004 and are not otherwise exempt under Sect. 803 above, for elevator multiple family dwelling unit structures that are to be four (4) stories or more in height and constructed of Building Construction Type 5 (combustible) as specified in the Virginia Uniform Statewide Building Code (VUSBC), the total maximum number of dwelling units permitted under the approved density applicable to such property, exclusive of additional units allowed pursuant to this paragraph, shall be increased by up to seventeen (17) percent.

For developments with fifty (50) percent or less of the required parking for multiple family dwelling units provided in above- or below-surface structures, and if a seventeen (17) percent increase in density is obtained, not less than six and one-quarter (6.25) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than seventeen (17) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 17 to 6.25 ratio between the density increase and the affordable dwelling units. In the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

For developments with more than fifty (50) percent of the required parking for multiple family dwelling units provided in above- or below-surface structures, and if a seventeen (17) percent increase in density is obtained, not less than five (5.0) percent of the adjusted total maximum number of dwelling units shall be affordable dwelling units. In the event a density increase of less than seventeen (17) percent is the resulting maximum density increase, then the percentage of affordable dwelling units required shall be reduced to maintain a 17 to 5.0 ratio between the density increase and the affordable dwelling units. In



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the event that no density increase is achieved on the property, no affordable dwelling units shall be required.

6. For developments where affordable dwelling units are being voluntarily provided, such units shall be provided in accordance with Par. 5 of Sect. 802 above.
7. When the requirement for affordable dwelling units, as calculated in accordance with the above paragraphs, results in a fractional unit of less than 0.5, the number shall be rounded down and any fractional unit of 0.5 or greater shall be rounded up to produce an additional affordable dwelling unit.
8. For the purposes of administration of this Part, where the adopted comprehensive plan does not specify a density range in terms of dwelling units per acre, the following shall apply:
  - A. Where the adopted comprehensive plan specifies an upper density limit in terms of dwelling units per acre, but there is no lower density limit, then the low end of the density range shall be fifty (50) percent of the upper density limit set forth in the adopted comprehensive plan.
  - B. Where the adopted comprehensive plan specifies a maximum number of dwelling units for an area, but no density range in terms of dwelling units per acre is specified, the density range shall be determined as follows:
    - (1) The upper density limit shall be equal to the maximum number of dwelling units specified in the adopted comprehensive plan divided by the land area covered by the adopted comprehensive plan recommendation, and
    - (2) The lower density limit shall be equal to fifty (50) percent of the upper density limit calculated above.
  - C. Where the adopted comprehensive plan specifies a square footage or floor area ratio (FAR) range for residential uses for a specific area, but no density range in terms of dwelling units per acre, the dwelling unit per acre density range for single family dwelling unit developments and multiple family dwelling unit developments that do not have an elevator, or have an elevator and are three (3) stories or less in height shall be determined by dividing the residential square footage specified in the adopted comprehensive plan by an average dwelling unit size for the proposed dwelling unit type within the development.

For multiple family dwelling unit developments consisting of four (4) stories or more with an elevator, the dwelling unit per acre density range shall be determined by multiplying the residential square footage specified in the adopted comprehensive plan by eighty-five (85) percent, and dividing that product by an average dwelling unit size for the proposed dwelling unit type within the development.

In all of the above, when the adopted comprehensive plan specifies only a maximum square footage or FAR, the density range shall be determined as follows:

    - (1) The upper density limit shall be equal to the maximum number of dwelling units calculated above divided by the land area covered by the adopted comprehensive plan recommendation, and

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- (2) The lower density limit shall be equal to fifty (50) percent of the upper density limit calculated above.

Note: FAR is converted into square footage by multiplying the FAR by the acreage of the development by 43,560.

### **2-805 Bulk Regulations, Unit Type, Open Space, Lot Size Requirements and Other Regulations**

Any development which provides affordable dwelling units on site and/or which includes bonus market rate dwelling units on site pursuant to the provisions of this Part, shall comply with the respective zoning district regulations which apply to affordable dwelling unit developments.

### **2-806 Designation of Affordable Dwelling Units on Approved Plans**

Approved site plans and record subdivision plats shall designate the specific lots or units which are the affordable dwelling units required pursuant to this Part. However, in the case of a multiple family development which is under single ownership, and is a rental project, the affordable dwelling units need not be specifically identified. However, for all multiple family developments, the number of affordable dwelling units by bedroom count and the number of market rate dwelling units by bedroom count shall be noted on the approved site plan and building plan, which notation shall be a condition of the approved site plan and building plan. In a multiple family dwelling development, the number of bedrooms in affordable dwelling units shall be proportional to the bedroom mix of market rate units, unless the owner elects to provide a higher percentage of affordable dwelling units with a greater bedroom count. Affordable dwelling units which are included on approved site plans and recorded subdivision plats shall be deemed features shown for purposes of Section 15.2-2232 of Va. Code Ann. and, as such, shall not require further approvals pursuant thereto in the event the Fairfax County Redevelopment and Housing Authority shall acquire or lease such units.

For multiple section developments where all the required affordable dwelling units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) and/or subdivision plat(s) have been approved.

### **2-807 Condominium Developments**

1. If a development is initially built as a condominium and such development is subject to the requirements of this Part, then the affordable dwelling units required pursuant to this Part shall be specifically identified on the approved site plan, building plans and designated as part of the recorded condominium declaration.
2. If a development is initially built as a rental project under single ownership and such development was subject to the requirements of this Part and then should subsequently convert to a condominium, then:
  - A. The provisions of Sect. 804 above shall apply to such condominium development.

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- B. The affordable dwelling units required pursuant to this Part shall be specifically identified as part of the recorded condominium declaration.
- C. If the owner of such condominium conversion elects to renovate the affordable dwelling units, the Affordable Dwelling Unit Advisory Board shall consider the reasonable cost of labor and materials associated with such renovation, which costs shall be factored into the Advisory Board's recommendation to the County Executive respecting the permissible sales prices for such renovated affordable dwelling units.

**2-808**

### **Limitations on Building Permits and Residential Use Permits**

1. In a development which contains single family detached or attached lots or units, building permits shall not be issued for more than seventy-five (75) percent of the total number of approved units until such time as Residential Use Permits (RUPs) have been issued for all affordable dwelling units required pursuant to the provisions of this Part; except that:
  - A. the Zoning Administrator may allow an increase in the number of building permits issued from seventy-five (75) percent up to ninety (90) percent of the total number of approved units when the affordable dwelling units are distributed throughout the development and, at the time of request for such increase, seventy-five (75) percent of the affordable dwelling units have been issued RUPs; and
  - B. the Zoning Administrator may allow an increase in the number of building permits issued from ninety (90) percent up to one hundred (100) percent of the total number of approved units in the development, if it can be demonstrated that the construction of additional market rate units over the ninety (90) percent is necessary in order to obtain building permits for the construction of the affordable dwelling units which are required pursuant to this Part. In such event, the development agreement and its security (bond, letter of credit, etc.) for the development shall not be released until such time as all of the affordable dwelling units within the development have been issued RUPs.
2. In a development which is comprised solely of for sale multiple family units, Residential Use Permits (RUPs) shall not be issued which would permit occupancy of more than seventy-five (75) percent of the total number of approved units until such time as RUPs have been issued for all affordable dwelling units required pursuant to the provisions of this Part; except that the Zoning Administrator may allow an increase in the number of RUPs issued from seventy-five (75) percent up to ninety (90) percent of the total number of approved units when the affordable dwelling units are distributed throughout the development and, at the time of request for such increase, seventy-five (75) percent of the affordable dwelling units have been issued RUPs. In all instances, building permits shall not be issued for more than ninety (90) percent of the total number of dwelling units approved until such time as ninety (90) percent of the affordable dwelling units have been issued RUPs. However, the Zoning Administrator may allow the issuance of building permits for up to one hundred (100) percent of the total number of approved units in the development if it can be demonstrated that the construction of additional market rate units is necessary in order to obtain building permits for the construction of the affordable dwelling units which are required pursuant to this Part. In such event, the development agreement and its security

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(bond, letter of credit, etc.) for the development shall not be released until such time as all of the affordable dwelling units within the development have been issued RUPs.

3. The Affordable Dwelling Unit Advisory Board may approve a modification to the requirements of Paragraphs 1 and 2 above, in accordance with Sect. 815 below.
4. A development which contains for sale and/or rental multiple family units and single family detached or attached lots or units shall be subject to the provisions of Par. 1 above. A development which is comprised solely of rental multiple family units shall not be subject to the limitations on the issuance of building permits and Residential Use Permits contained in this Section, except in accordance with Sect. 811 below, which requires execution of a Notice of Availability and Rental Offering Agreement prior to the issuance of the first RUP for the development.

### 2-809

#### **Affordable Dwelling Unit Specifications**

1. The Fairfax County Redevelopment and Housing Authority (FCRHA) shall develop specifications for the prototype affordable housing products both for sale and rental, which specifications shall be reviewed and approved by the Affordable Dwelling Unit Advisory Board before becoming effective. All building plans for affordable dwelling units shall comply to such specifications. Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only fifty (50) percent of any added cost for exterior architectural compatibility upgrades (such as brick facade, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit lot shall be included within recoverable costs, up to a maximum of two (2) percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one-half (1/2) of the above-noted two (2) percent maximum.
2. In the administration of the Affordable Dwelling Unit Program, the design and construction specifications established in both rental and sales prices shall be structured to make the units affordable to households whose incomes do not exceed seventy (70) percent of the median income of the Washington Standard Metropolitan Statistical Area.

### 2-810

#### **Administration of For Sale Affordable Dwelling Units**

1. The sale of affordable dwelling units shall be regulated by the Fairfax County Redevelopment and Housing Authority. The Housing Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.
2. The Fairfax County Redevelopment and Housing Authority shall have an exclusive right to purchase up to one-third (1/3) of the for sale affordable dwelling units within a development for a ninety (90) day period beginning on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority. The notice shall advise the Redevelopment and Housing Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the Redevelopment and Housing Authority and include specific identification of the unit or units being offered; the number of bedrooms, floor area and amenities for each unit; the approved sales price for each unit and

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evidence of issuance of a building permit for the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling unit and approval of the sales price for the unit by the County Executive, but shall occur prior to the issuance of the first Residential Use Permit for any affordable dwelling unit in the development. If the Redevelopment and Housing Authority elects to purchase a particular affordable dwelling unit, the Redevelopment and Housing Authority shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the respective ninety (90) day period, provided a Residential Use Permit has been issued for the unit prior to closing.

3. The remaining two-thirds (2/3) of the for sale affordable dwelling units within a development and any units which the Fairfax County Redevelopment and Housing Authority does not elect to purchase shall be offered for sale exclusively for a ninety (90) day period to persons who meet the income criteria established by the Redevelopment and Housing Authority, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. This ninety (90) day period shall begin on the date that a complete Notice of Availability and ADU Sales Offering Agreement, submitted by the owner, is executed by the Redevelopment and Housing Authority. The notice shall advise the Redevelopment and Housing Authority that a particular affordable dwelling unit or units are or will be completed and ready for purchase. The notice shall be in the form prescribed by the Redevelopment and Housing Authority and include the information described in Par. 2 above. In addition, the owner shall provide marketing materials concerning the units and the development to be used in the sale of the units. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling unit and approval of the sales price for the unit by the County Executive. Notwithstanding the foregoing, after the first thirty (30) days of the ninety (90) day period referenced in this paragraph, the Redevelopment and Housing Authority may elect to purchase up to one-half (1/2) of the affordable dwelling units offered pursuant to this paragraph by giving written notice of its election to do so for those units then available within the ninety (90) day period, which notice shall provide for an all cash closing within thirty (30) days from the end of the ninety (90) day period, provided a Residential Use Permit has been issued prior to closing.
4. After the expiration of the sixty (60) days of the ninety (90) day period(s) referenced in Paragraphs 2 and 3 above, the affordable dwelling units not sold shall be offered for sale to nonprofit housing groups, as designated by the County Executive, subject to the established affordable dwelling unit prices and the requirements of this Part. The nonprofit housing groups shall have a thirty (30) day period within which to commit to purchase the units. This thirty (30) day period shall begin on the date of receipt of written notification from the owner, sent by registered or certified mail, advising them that a particular affordable dwelling unit is or will be ready for purchase. The notice shall state the number of bedrooms, floor area and amenities for each unit offered for sale. Such written notice may be sent by the owner any time after the commencement of the ninety (90) day period referenced in Paragraphs 2 and 3 above. If a nonprofit housing group elects to purchase a particular affordable dwelling unit, they shall so notify the owner in writing and an all cash closing shall occur within thirty (30) days from the end of the thirty (30) day period, provided a Residential Use Permit has been issued for the unit prior to closing.
5. After the expiration of the time period(s) referenced in Paragraphs 2, 3, and 4 above, the affordable dwelling units not sold may be offered to the general public as for sale units

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subject to established affordable dwelling unit prices and the requirements of this Part or may be offered as rental units subject to the requirements of this Part to persons who meet income requirements hereunder.

6. A schedule of County-wide cost factors and the cost calculation formula used to determine sales prices shall be established initially and may be amended periodically by the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct the various affordable dwelling unit prototype dwellings by private industry in Fairfax County, after consideration by the County Executive of written comment from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions.
7. Sales prices shall include, among other costs, a marketing and commission allowance of one and one-half (1 1/2) percent of the sales price for the affordable dwelling unit, provisions for builder-paid permanent mortgage placement costs and buy-down fees, and closing costs, except pre-paid expenses required at settlement, but shall not include the cost of land.
8. There shall be a semiannual review and possible adjustment in affordable dwelling unit sales prices which shall be applied to the affordable dwelling unit sales prices initially established by the County Executive adjusted according to the percentage change in the various cost elements as indicated by the U.S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board.
9. The sales prices for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. "Economic loss" shall mean that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the County Executive for the affordable dwelling units pursuant to this Part, exclusive of the land acquisition cost and cost voluntarily incurred, but not authorized under this Part, upon the sale of an affordable dwelling unit.

### 2-811

#### **Administration of Rental Affordable Dwelling Units**

1. The Fairfax County Redevelopment and Housing Authority may adopt reasonable rules and regulations to assist in the regulation and monitoring of the rental of affordable dwelling units, which may include giving a priority to persons who live or work in Fairfax County.

The Redevelopment and Housing Authority or its designee shall have an exclusive right to lease up to one-third (1/3) of the rental affordable dwelling units within a single family detached or attached dwelling unit development during the control period.

For the initial rentals of units within a single family detached or attached dwelling unit development or multiple family dwelling development, the owner shall send the Redevelopment and Housing Authority a Notice of Availability and ADU Rental Offering Agreement in a form prescribed by the Redevelopment and Housing Authority, to advise that a particular affordable dwelling unit or units are or will be completed and ready for rental. Such Notice of Availability and ADU Rental Offering Agreement shall be submitted to and executed by the Redevelopment and Housing Authority prior to the issuance of the first Residential Use Permit for any dwelling within the development. The notice shall state the

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number of bedrooms, floor area, amenities and rent for each unit offered for rental. Such written notice may be sent by the owner at any time after the issuance of a building permit for the affordable dwelling units which are being offered for rental. If the Redevelopment and Housing Authority elects to assume control for a particular affordable dwelling unit, the Redevelopment and Housing Authority shall so notify the owner in writing within thirty (30) days from the execution of the notice by the Redevelopment and Housing Authority.

For multiple family dwelling developments, for thirty (30) days subsequent to execution of the notice described above by the Redevelopment and Housing Authority, up to one-third (1/3) of the rental affordable dwelling units, which units shall be of proportional bedroom count to the market rate units in the multiple family development, shall be made available to households meeting owner's normal rental criteria, other than income, having state and/or local rental subsidies, and certified as eligible by the Redevelopment and Housing Authority at rents affordable to households with incomes up to fifty (50) percent of the Washington Standard Metropolitan Statistical Area median income. If the name of a qualifying tenant is not made available to the owner by the Redevelopment and Housing Authority, at the end of the thirty (30) day notice period, the owner may rent the unit(s) to households with income up to fifty (50) percent of the median income for the Washington Standard Metropolitan Statistical Area at a rent affordable to such a household.

At the owner's option, the Redevelopment and Housing Authority may lease additional rental units at the affordable dwelling unit or market rent as appropriate. The remaining two-thirds (2/3) of the for rental affordable dwelling units within a development, which units shall be of proportional bedroom count to the market rate units in the multiple family development, shall be offered to persons who meet the established income criteria.

2. Any affordable dwelling units required pursuant to this Part which are not leased by the Fairfax County Redevelopment and Housing Authority shall be leased for a minimum six (6) month period with a maximum term of lease for one (1) year to tenants who meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority. The lease agreements for such units shall include conditions which require the tenant to occupy the unit as his or her domicile, which prohibit the subleasing of the unit, which require continued compliance with the eligibility criteria established by the Housing Authority, and which require the tenant to annually verify under oath, on a form approved by the Fairfax County Redevelopment and Housing Authority, his or her annual income and such other facts that the landlord may require in order to ensure that the tenant continues to meet the eligibility criteria established by the Housing Authority.
3. Eligible tenants must continue to meet the income criteria established by the Fairfax County Redevelopment and Housing Authority in order to continue occupancy of the affordable dwelling unit. However, a tenant who no longer meets such criteria may continue to occupy an affordable dwelling unit until the end of the lease term. Affordable dwelling units not leased by the Fairfax County Redevelopment and Housing Authority may not be subleased.
4. By the end of each month, the owner of a development containing rental affordable dwelling units leased to individuals other than the Fairfax County Redevelopment and Housing Authority shall provide the Housing Authority with a statement verified under oath which certifies the following as of the first of such month:
  - A. The address and name of the development and the name of the owner.

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- B. The number of affordable dwelling units by bedroom count, other than those leased to the Housing Authority, which are vacant.
  - C. The number of affordable dwelling units by bedroom count which are leased to individuals other than the Housing Authority. For each such unit, the statement shall contain the following information:
    - (1) The unit address and bedroom count.
    - (2) The tenant's name and household size.
    - (3) The effective date of the lease.
    - (4) The tenant's (household) income as of the date of the lease.
    - (5) The current monthly rent.
  - D. That to the best of owner's information and belief, the tenants who lease affordable dwelling units meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority.
  - E. The owner shall provide the Housing Authority with a copy of each new or revised annual tenant verification obtained from the renters of affordable dwelling units pursuant to Par. 2 above.
5. For single family detached or attached dwelling units, County-wide rental prices shall be established initially by the County Executive, based upon a determination of all ordinary, necessary and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after consideration by the County Executive of written comments from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board, and other information which may be available, such as the area's current general market and economic conditions. In establishing rental prices, consideration shall be given to reasonable and customary allowances in the rental industry for construction, financing and operating costs of the rental units.
6. For multiple family dwelling units, County-wide rental prices shall be established by the County Executive in accordance with the following:
- A. Two-thirds (2/3) of the affordable units in multiple family dwelling unit structure developments, which are not otherwise exempt under Sect. 803 above, shall be established according to the following formula which shall be based on sixty-five (65) percent of the median income for the Washington Standard Metropolitan Statistical Area. This base figure shall be adjusted by the following factors for different multiple family dwelling unit sizes based on the number of bedrooms in the dwelling unit:

Number of Bedrooms	Adjustment Factor
Efficiency (0 bedroom)	70%
1 Bedroom	80%



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2 Bedroom	90%
3 Bedroom	100%

The result of this calculation for each size multiple family dwelling unit shall then be divided by twelve (12), then multiplied by twenty-five (25) percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.

- B. One-third (1/3) of the affordable units in multiple family dwelling unit structure developments, which are not otherwise exempt under Sect. 803 above, shall be established according to the following formula which shall be based on fifty (50) percent of the median income for the Washington Standard Metropolitan Statistical Area. This base figure shall be adjusted by the same factors set forth in Par. A above and the results of this calculation for each size dwelling unit shall then be divided by twelve (12), then multiplied by twenty-five (25) percent and rounded to the nearest whole number to establish the rent for the unit, excluding utilities.
  - C. Rental prices for affordable dwelling units in independent living facility projects which have a monthly charge which combines rent with a service package shall be established on a case by case basis after consideration of written comments from the public, the Fairfax County Redevelopment and Housing Authority and the Affordable Dwelling Unit Advisory Board.
- 7. Rental prices for affordable dwelling units shall be established such that the owner/applicant shall not suffer economic loss as a result of providing rental affordable dwelling units.
  - 8. There shall be a semiannual review and possible adjustment in affordable dwelling unit rental prices which shall be applied to the affordable dwelling unit rental prices initially established by the County Executive, adjusted according to the percentage change in the various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that are selected by the County Executive and recommended by the Affordable Dwelling Unit Advisory Board. In setting adjusted rental prices, the County Executive may establish different rental classifications and prices which reflect the age and condition of the various rental developments within Fairfax County. Rental prices for multiple family dwelling units shall be adjusted in accordance with the formulas set forth in Par. 6 above.

### 2-812

#### **Covenant, Price and Financing Control of Affordable Dwelling Units**

- 1. Except as qualified by Par. 8 below, subsequent price control of affordable dwelling units shall be as follows:
  - A. For affordable dwelling units for which the initial sale and/or rental occurred prior to 12:01 AM March 31, 1998, the prices for subsequent resales and rerentals shall be controlled for a period of fifty (50) years after the initial sale and/or rental transaction for the respective affordable dwelling unit, provided that the control period may be amended upon recordation of a revised covenant in accordance with Par. 2 below; or

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- B. For affordable dwelling units for which the initial sale/rental occurred after 12:01 AM March 31, 1998, the prices for subsequent resales shall be controlled for a period of fifteen (15) years and rerentals shall be controlled for a period of twenty (20) years after the initial sale and/or rental transaction for the respective affordable dwelling unit.
2. In developments containing affordable dwelling units offered for sale, Affordable Dwelling Unit Program covenants, which are applicable to the affordable dwelling units and which run in favor of and are in the form prescribed by the Fairfax County Redevelopment and Housing Authority, shall be recorded simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. All such initial and any subsequent or revised Affordable Dwelling Unit Program covenants thereafter recorded shall expressly provide all of the following:
- A. The dwelling unit may not be resold during the fifteen (15) year control period for an amount that exceeds the limits set by the County Executive and, prior to offering the dwelling unit for sale, the sales price shall be approved by the Department of Housing and Community Development.
  - B. Each time the unit may be offered for resale during the fifteen (15) year control period, it shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority for sixty (60) days.
  - C. For the initial sale of the affordable dwelling unit after the expiration of the fifteen (15) year control period, it shall first be offered exclusively to the Fairfax County Redevelopment and Housing Authority for sixty (60) days. In all instances, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price (as adjusted in accordance with Par. 4 below) shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County.
  - D. The unit is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
  - E. For the initial and revised covenants recorded before July 2, 2002:
    - (1) the covenants shall be senior to all instruments securing permanent financing, and that the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.
    - (2) the covenants shall state that any or all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.

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- F. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002:
- (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenants shall be released in the event of foreclosure by an Eligible Lender, as such term is defined in Par. 8B below, as and only to the extent provided for in Par. 8B below.
  - (2) the covenants shall state that all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
  - (3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
  - (4) each Eligible Lender and any other lender secured by an interest in the affordable dwelling unit shall be required prior to foreclosure to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.
  - (5) the covenants shall state that the unit is subject to all of the provisions set forth in Par. 8B below and shall state those provisions.
  - (6) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling units shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 below). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 below) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.

At the time of the initial sale of an individual affordable dwelling unit, which sale occurs on or after March 31, 1998, the owner/applicant shall provide in the sales contract for each affordable dwelling unit offered for sale a copy of the recorded covenant running with the land in favor of the Redevelopment and Housing Authority. The owner/applicant shall include in the deed for each affordable dwelling unit sold an express statement that the affordable dwelling unit is subject to the terms and conditions of the Affordable Dwelling Unit Program covenants recorded pursuant to this Part with a specific reference to the deed book and page where such covenants are recorded. At the time of the initial sale and any

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resale of an individual affordable dwelling unit, which sale or resale occurs on or after July 2, 2002, the owner/applicant shall also include in the deed for each affordable dwelling unit sold an express statement that the total aggregate amount of indebtedness that may be secured by the affordable dwelling unit is limited and that other terms and conditions apply, including, but not limited to, a right for the Fairfax County Redevelopment and Housing Authority or a nonprofit agency designated by the County Executive to acquire the affordable dwelling unit on certain terms in the event of a pending foreclosure sale, as set forth in the Affordable Dwelling Unit Program covenants and/or in the Affordable Dwelling Unit Program set forth in the Fairfax County Zoning Ordinance, as it may be amended.

For individual affordable dwelling units conveyed prior to 12:01 AM March 31, 1998, the owner may modify the existing covenant recorded with such conveyance by recording a revised covenant in the form prescribed by the Redevelopment and Housing Authority. Upon recordation of a revised covenant, the fifteen (15) year control period for sale units and the twenty (20) year control period for rental units shall be deemed to have commenced on March 31, 1998. Any revised covenants hereafter recorded that reduce the control period from fifty (50) years to fifteen (15) years for sale units or twenty (20) years for rental units shall expressly provide that all terms and conditions of other previously recorded covenants shall continue to apply, as amended in accordance with the terms herein.

3. For the first sixty (60) days individual affordable dwelling units are offered for resale, the units shall first be offered exclusively through the Fairfax County Redevelopment and Housing Authority to persons who meet the Redevelopment and Housing Authority's criteria, and who have been issued a Certificate of Qualification by the Redevelopment and Housing Authority. After the initial thirty (30) days of the sixty (60) day period, the Redevelopment and Housing Authority shall have the option to acquire the units not already committed during the initial thirty (30) day period by giving written notice of its election, which notice shall state that the all cash closing shall occur within thirty (30) days of the expiration of the sixty (60) day period. Upon the expiration of the sixty (60) day period, the unit may be offered for sale to the general public to persons who meet income requirements hereunder and at the current controlled price as set pursuant to Sect. 810 above.
4. Units offered for sale during the fifteen (15) year control period shall not be offered for a price greater than the original selling price plus a percentage of the unit's original selling price equal to the increase in the U. S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Fairfax County Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of original sale and the date of resale, plus an allowance for payment of closing costs on behalf of the subsequent purchaser which shall be paid by the seller. Those features deemed to be substantial and appropriate replacements or improvements of housing components and structural improvements are as set forth by the Fairfax County Redevelopment and Housing Authority. No increase in sales price shall be allowed for the payment of brokerage fees associated with the sale of the unit, except that an increase of one and one-half (1 1/2) percent of the sales price shall be allowed as a fee to be paid to a real estate broker or agent licensed to conduct residential real estate transactions in the Commonwealth of Virginia who meets the qualifications determined by the Redevelopment and Housing Authority and who

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serves as a dual agent for both the qualified buyer and the seller in the resale of the affordable dwelling unit in accordance with sales procedures approved by the Housing Authority. The one and one-half (1 1/2) percent fee shall be paid to such real estate broker or agent by the seller at the time of settlement of the resale of the affordable dwelling unit as part of the disbursement of settlement proceeds.

5. For the initial sale of an affordable dwelling unit after the expiration of the fifteen (15) year control period, the Fairfax County Redevelopment and Housing Authority shall be offered the exclusive right to purchase the unit. The owner of each such unit shall provide the Redevelopment and Housing Authority with written notification sent by registered or certified mail that the unit is for sale. If the Redevelopment and Housing Authority elects to purchase such unit, the Authority shall so notify the owner in writing within thirty (30) days of receipt of the written notification from the owner and the all cash closing shall occur within sixty (60) days thereafter.

In all instances, whether or not the Redevelopment and Housing Authority elects to purchase such unit, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (a) substantial and appropriate replacements or improvements of existing housing components and/or (b) structural improvements made to the unit between the date of the owner's purchase and the date of resale shall be contributed to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlements proceeds. Such equity interest of the Fairfax County Housing Trust Fund shall apply to each affordable dwelling unit. Notice of such equity interest of the Fairfax County Housing Trust Fund may be evidenced by a document recorded among the land records of Fairfax County, Virginia encumbering any affordable dwelling unit. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or shall be paid otherwise by the seller. In no event shall any such amounts required to be paid by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

6. In the case of a rental project, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any affordable dwelling units, the owner shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority which provides that for twenty (20) years from the date of issuance of the first Residential Use Permit for the affordable dwelling units required under this Part, which date shall be subsequently specified in the covenant, that no such unit may be rented for an amount which exceeds the limits set by the County Executive, that the project is subject to the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, that the covenant shall be senior to all instruments securing

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permanent financing, and that the covenant shall be binding upon all assignees, mortgagees, purchasers and other successors in interest. However, for initial and revised covenants recorded before July 2, 2002, the covenants shall provide that in the event of foreclosure, the covenants shall be released. For initial and revised covenants recorded on or after July 2, 2002, the covenants shall terminate in the event of the foreclosure sale of a rental project by an Eligible Lender, in accordance with Par. 8B below. Additionally, prior to the issuance of the first Residential Use Permit for any of the dwelling units within the development, the owner shall provide the Notice of Availability and Offering Agreement required by Par. 1 above.

7. Rentals subsequent to the initial rental during the twenty (20) year control period shall not exceed the rental rate established by the County Executive pursuant to Par. 8 of Sect. 811 above.
8. The financing of affordable dwelling units provided pursuant to this Part shall comply with the following:
  - A. For initial and revised covenants recorded before July 2, 2002:
    - (1) the covenant shall be senior to all instruments securing permanent financing, and the covenant shall be binding upon all assignees, mortgages, purchasers and other successors in interest. However, the covenants shall provide that, in the event of foreclosure, the covenants shall be released.
    - (2) the covenants shall state that all financing documents shall require the lender to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under a mortgage and the Fairfax County Redevelopment and Housing Authority shall have the right for a sixty (60) day period to cure such a default.
    - (3) any and all financing documents shall provide that, in the event of foreclosure of projects and units subject to the requirements of this Part that are comprised of rental or for sale affordable dwelling units, the lender shall give written notice to the Fairfax County Redevelopment and Housing Authority of the foreclosure sale at least thirty (30) days prior thereto and in the case of individual for sale affordable dwelling units, the Housing Authority shall have the right to cure the default.
  - B. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002:
    - (1) the covenants shall be senior to all instruments securing financing, and the covenants shall be binding upon all assignees, mortgagees, purchasers and other successors in interest, except that the covenant shall be released in the event of foreclosure by an Eligible Lender, as and only to the extent provided for in Par. 8B(5) below.

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- (2) all financing documents shall require every Eligible Lender and every other lender secured by an individual for sale affordable dwelling unit to provide to the County Executive and the Fairfax County Redevelopment and Housing Authority written notice of any delinquency or other event of default under the deed of trust or mortgage and that the Fairfax County Redevelopment and Housing Authority shall have the right to cure such delinquency or other event of default within a period of ninety (90) days immediately after receipt by the Fairfax County Redevelopment and Housing Authority of such notice.
- (3) no sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance.
- (4) the total aggregate amount of principal and accrued interest for all financing secured by an individual for sale affordable dwelling unit shall not exceed the owner's purchase price (as adjusted in accordance with Par. 4 above). Any financing in excess of the owner's purchase price (as adjusted in accordance with Par. 4 above) shall not be secured by any interest in the applicable individual for sale affordable dwelling unit.
- (5) an Eligible Lender is defined as an institutional lender holding a first priority purchase money deed of trust on a rental project or on an individual for sale affordable dwelling unit or a refinancing of such institutionally financed purchase money deed of trust by an institutional lender, provided that such refinancing does not exceed the outstanding principal balance of the existing purchase money first trust indebtedness on the unit at the time of refinancing. An Eligible Lender shall have the right to foreclose on a rental project or an affordable dwelling unit and the covenants on the rental project or affordable dwelling unit shall terminate upon such foreclosure by the Eligible Lender in the event that the rental project or the affordable dwelling unit is sold by a trustee on behalf of the Eligible Lender to a bona fide purchaser for value at a foreclosure sale and all the requirements of the Affordable Dwelling Unit Program as set forth in the Fairfax County Zoning Ordinance, the covenants, and applicable regulations with respect to such foreclosure sale are satisfied. Such requirements include, but are not limited to, the Eligible Lender with respect to an individual for sale affordable dwelling unit having provided the County Executive and the Redevelopment and Housing Authority written notice of the foreclosure sale proposed and having provided the Right to Cure and the Right to Acquire, as such terms are defined in Par. 8B(6) below. An Eligible Lender with respect to a rental project shall not be required to provide the Right to Cure and the Right to Acquire.
- (6) each Eligible Lender with respect to an individual for sale affordable dwelling unit shall also provide a right to cure any delinquency or default (Right to Cure), and a right to acquire an individual for sale affordable dwelling unit subject to the foreclosure notice given pursuant to Par. 8B(8) below (Right to Acquire). The Right to Cure and/or the Right to Acquire, as applicable, may be exercised by the Fairfax County Redevelopment and Housing Authority, or by

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a nonprofit agency designated by the County Executive in the event the Redevelopment and Housing Authority elects not to exercise its right, at any time during such ninety (90) day period after the Redevelopment and Housing Authority has received notice of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale. An affordable dwelling unit so acquired shall be acquired for the purpose of resale of such unit to persons qualified under the Affordable Dwelling Unit Program and not for conversion of the affordable dwelling unit to a rental unit. The Right to Acquire shall entitle the Redevelopment and Housing Authority or the nonprofit agency designated by the County Executive to acquire the affordable dwelling unit at or before any foreclosure sale for which such notice has been given upon payment in full of the outstanding indebtedness on the affordable dwelling unit owed to the Eligible Lender including principal, interest, and fees that together in the aggregate do not exceed the amount of the owner's purchase price (as adjusted in accordance with Par. 4 above), and other reasonable and customary costs and expenses (the Outstanding First Trust Debt), with no owner, prior owner or other party, whether secured or not, having any rights to compensation under such circumstances.

- (7) in the event that neither the Fairfax County Redevelopment and Housing Authority nor the nonprofit agency designated by the County Executive exercises the Right to Acquire and the individual for sale affordable dwelling unit is sold for an amount greater than the Outstanding First Trust Debt, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County as part of the disbursement of settlement proceeds.
  - (8) each Eligible Lender and any other lender secured by an interest in a rental project or an individual for sale affordable dwelling unit shall be required prior to foreclosing to provide the County Executive and the Fairfax County Redevelopment and Housing Authority at least ninety (90) days prior written notice thereof.
  - (9) all financing documents for financing secured by an individual for sale affordable dwelling unit shall state that the Eligible Lender's financing provides the Right to Cure and Right to Acquire which may be exercised by the Fairfax County Redevelopment and Housing Authority, or by a nonprofit agency designated by the County Executive in the event the Fairfax County Redevelopment and Housing Authority elects not to exercise its rights, at any time during such ninety (90) day period after the Fairfax County Redevelopment and Housing Authority has received notice, as applicable, of the delinquency or default or of the proposed foreclosure up to and including at such foreclosure sale.
9. Notwithstanding the above, for multiple family dwelling rentals, all of the relevant provisions of this Part shall apply for the twenty (20) year control period except that after the initial ten (10) years and after provision of 120 day written notice to the Housing Authority and the tenants of the affordable dwelling units, the owner may elect to file a



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rezoning application and comply with whatever requirements result therefrom, or may elect to pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all bonus and affordable dwelling units and provide relocation assistance to the tenants of the affordable dwelling units in accordance with the requirements of Article 4 of Chapter 12 of The Code. Thereupon, the units previously controlled by this Part as affordable dwelling units shall be released fully.

10. The provisions set forth in Par. 2F and Par. 8B above shall apply and the applicable covenants shall be deemed to incorporate such provisions, whether or not expressly set forth in such covenants, to any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and the resale of any individual affordable dwelling unit conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002.
11. In the event of a foreclosure sale of any affordable dwelling unit after September 14, 2004 the following shares of the proceeds of such foreclosure sale shall be paid to the Fairfax County Housing Trust Fund to promote housing affordability in Fairfax County:
  - A. For any individual affordable dwelling unit initially conveyed on or after July 2, 2002 and any individual affordable dwelling unit resold and conveyed on or after July 2, 2002, regardless of whether the covenants applicable to any such initial conveyance or resale conveyance were recorded prior to July 2, 2002, and for initial and revised covenants recorded on or after July 2, 2002, in the event that the individual for sale affordable dwelling unit is sold at the foreclosure sale for an amount greater than the Outstanding First Trust Debt, as such term is defined in Par. 8B(6) above, one-half (1/2) of the amount in excess of the Outstanding First Trust Debt shall be paid to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds.
  - B. For all other individual affordable dwelling units, in all instances, one-half (1/2) of the amount of the difference between the net sales price paid by the purchaser at such sale and the foreclosed owner's purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the lesser of the current fair market value or the actual original cost of certain improvements as determined by the Redevelopment and Housing Authority in accordance with its regulations to be (1) substantial and appropriate replacements or improvements of existing housing components and/or (2) structural improvements made to the unit between the date of the foreclosed owner's purchase and the date of resale shall be contributed to the Fairfax County Housing Trust Fund as part of the disbursement of settlement proceeds. Net sales price shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller. All amounts necessary to pay and satisfy any and all liens, judgments, deeds of trust, or other encumbrances on the unit, other than the equity interest of the Fairfax County Housing Trust Fund, shall be paid by the seller out of proceeds of the seller from such sale, as determined in accordance with this paragraph, or shall be otherwise paid by the seller. In no event shall any such amounts required to be paid

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by the seller reduce the amount, as determined in accordance with this paragraph, which is to be contributed to the Fairfax County Housing Trust Fund pursuant to this paragraph.

### **2-813      Occupancy of Affordable Dwelling Units**

1. Before an individual may purchase an affordable dwelling unit, he or she must obtain a Certificate of Qualification from the Fairfax County Redevelopment and Housing Authority. Before issuing a Certificate of Qualification, the Housing Authority shall determine that the applicant meets the criteria established by the Housing Authority for low and moderate income persons.
2. Before an individual may rent an affordable dwelling unit, he or she must meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority for persons of low and moderate income. The landlord/owner shall be responsible for determining that the tenant meets the eligibility criteria.
3. Except for circumstances referenced in Par. 5 of Sect. 810 and Par. 3 of Sect. 812 above, it shall be a violation of this Ordinance for someone to sell an affordable dwelling unit to an individual who has not been issued a Certificate of Qualification by the Fairfax County Redevelopment and Housing Authority.
4. Except as provided for in Par. 3 of Sect. 811 above, it shall be a violation of this Ordinance for someone to rent or continue to rent an affordable dwelling unit to an individual who does not meet or fails to continue to meet the income eligibility criteria established by the Fairfax County Redevelopment and Housing Authority.
5. Purchasers or renters of affordable dwelling units shall occupy the units as their domicile and shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the units. Owners of for sale affordable dwelling units shall forward such affidavit to the Fairfax County Redevelopment and Housing Authority on or before **June 1** of each year that they own the unit. Renters shall provide such affidavit to their landlords/owners by the date that may be specified in their lease or that may otherwise be specified by the landlord/owner.
6. In the event the renter of an affordable dwelling unit fails to provide his or her landlord/owner with an executed affidavit as provided for in the preceding paragraph within thirty (30) days of a written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the unit within thirty (30) days of written notice from the landlord/owner.
7. Except as provided for in Par. 3 of Sect. 811 above, in the event a renter of an affordable dwelling unit shall no longer meet the eligibility criteria established by the Fairfax County Redevelopment and Housing Authority, as a result of increased income or other factor, then at the end of the lease term, the occupant shall vacate the unit.
8. In the event a renter fails to occupy a unit for a period in excess of sixty (60) days, unless such failure is approved in writing by the Fairfax County Redevelopment and Housing Authority, a default shall occur. The lease shall automatically terminate, become null and

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void and the occupant shall vacate the unit within thirty (30) days of written notice from the landlord/owner.

9. Notwithstanding the provisions of Paragraphs 6, 7 and 8 above, if the landlord/owner shall immediately designate an additional comparable unit as an affordable dwelling unit to be leased under the controlled rental price and requirements of this Part, the renter of such unit referenced in Paragraphs 6, 7 and 8 above may continue to lease such unit at the market value rent.

### **2-814 Affordable Dwelling Unit Advisory Board**

1. The Affordable Dwelling Unit (ADU) Advisory Board shall consist of nine (9) members appointed by the Board of Supervisors. Members shall be qualified as follows:
  - A. Two members shall be either civil engineers and/or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in Fairfax County.
  - B. One member shall be a representative of a lending institution which finances residential development in Fairfax County.
  - C. Four members shall consist of:
    - (1) A representative from the Fairfax County Department of Housing and Community Development.
    - (2) A residential builder with extensive experience in producing single family detached and attached dwelling units.
    - (3) A residential builder with extensive experience in producing multiple family dwelling units.
    - (4) A representative from either the Fairfax County Department of Public Works and Environmental Services or the Department of Planning and Zoning.
  - D. One member shall be a representative of a nonprofit housing group which provides services in Fairfax County.
  - E. One member shall be a citizen of Fairfax County.
  - F. At least four members shall be employed in the private sector.
2. Each member of the ADU Advisory Board shall be appointed to serve a four-year term. Terms shall be staggered such that the initially constituted Board shall consist of four members appointed to four-year terms; three members appointed to three-year terms; and two members appointed to two-year terms.
3. The ADU Advisory Board shall advise the County Executive respecting the setting of the amount and terms of all sales and rental prices of affordable dwelling units.

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4. The ADU Advisory Board shall be authorized to hear and make final determinations or grant requests for modifications of the requirements of the Affordable Dwelling Unit Program, except that the ADU Advisory Board shall not have the authority to:
  - A. modify or reduce the Affordable Dwelling Unit Adjuster required pursuant to Sect. 804 above,
  - B. modify the unit specifications established by the Fairfax County Redevelopment and Housing Authority pursuant to Par. 1 of Sect. 809 above,
  - C. modify the eligibility requirements for participation in the ADU Program,
  - D. modify any proffered condition, development condition or special exception condition specifically regarding ADU's,
  - E. modify the zoning district regulations applicable to ADU developments,
  - F. hear appeals or requests for modifications of affordable dwelling unit sales or rental prices, or
  - G. modify the provisions of Par. 5 of Sect. 802 above regarding the percentage of affordable dwelling units required or to allow the construction of affordable dwelling units which are of a different dwelling unit type from the market rate units on the site.
5. The ADU Advisory Board shall elect its Chairperson and may adopt rules and regulations regarding its formulation of a recommendation regarding the amounts and terms of sales and rental prices of affordable dwelling units and the procedures to be followed by an applicant seeking a modification of the requirements of the Affordable Dwelling Unit Program.
6. Any determination by the ADU Advisory Board shall require the affirmative vote of a majority of those present. A quorum shall consist of no less than five (5) members. All determinations and recommendations shall be rendered within ninety (90) days of receipt of a complete application.

### 2-815

#### **Modifications to the Requirements of the Affordable Dwelling Unit Program**

1. Requests for modifications to the requirements of the Affordable Dwelling Unit Program as applied to a given development may be submitted in writing to the ADU Advisory Board. Such application shall include an application fee as provided for in Sect. 18-106 and the applicant shall specify the precise requirement for which a modification is being sought and shall provide a description of the requested modification and justification for such request. In the case of a modification request filed pursuant to Par. 3 below, the applicant shall demonstrate in detail how such request complies with the required findings by the ADU Advisory Board for such modification and why the requirements of this Part cannot be met on the applicant's property.
2. An applicant shall promptly provide such additional information in support of the request for a modification as the Affordable Dwelling Unit Advisory Board may require.

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3. In addition, in exceptional cases, instead of building the required number of affordable dwelling units, the ADU Advisory Board may permit an applicant to:
  - A. Convey the equivalent amount of land within the development for which a modification is sought to the Fairfax County Redevelopment and Housing Authority which would be necessary to provide the required number of affordable dwelling units. In such instances, the total number of dwelling units which the applicant may build on the remainder of the site shall be reduced by the number of affordable dwelling units required pursuant to Sect. 804 above; or
  - B. Contribute to the Fairfax County Housing Trust Fund an amount equivalent to the fair market value for the lot on which the affordable dwelling unit would otherwise have been constructed; or
  - C. Provide any combination of affordable dwelling units, land, or contribution to the Fairfax County Housing Trust Fund.

Permitting an applicant to meet the requirements of the Affordable Dwelling Unit Program by providing either land or contributions to the Fairfax County Housing Trust Fund is not favored. However, such modifications may be allowed upon demonstration by the applicant and a finding by the ADU Advisory Board that (1) the provision of all the affordable dwelling units required is physically and/or economically infeasible; (2) the overall public benefit outweighs the benefit of the applicant actually constructing affordable dwelling units on the particular site; and (3) the alternative will achieve the objective of providing a broad range of housing opportunities throughout Fairfax County.

4. The ADU Advisory Board shall act on requests for modifications within ninety (90) days of receipt of a complete application. The ninety (90) day time period shall be tolled during the time it takes the applicant to provide information requested pursuant to Par. 2 above.
5. The ADU Advisory Board may approve, deny, or may approve in part a request for a modification filed pursuant to this Section.
6. Persons aggrieved by the affordable dwelling unit for sale and rental prices established by the County Executive pursuant to the provisions of this Part to include decisions pursuant to Par. 2C of Sect. 807 above may appeal such prices to the Board of Supervisors. Such appeal shall be filed with the Clerk to the Board of Supervisors and shall specify the grounds upon which aggrieved and the basis upon which the applicant claims the established for sale or rental prices should be modified. The Board of Supervisors shall act within ninety (90) days of receipt of a complete application for appeal. An appeal to the Circuit Court is provided in Sect. 818 below.
7. The time limits set forth in Sections 15.2-2258 through 15.2-2261 of Va. Code Ann. shall be tolled during the pendency of an application filed pursuant to Paragraphs 1 or 7 above.

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1. A development which provides, pursuant to federal, state or other local programs, the same or more number of affordable dwelling units as the number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall satisfy the requirements of the Affordable Dwelling Unit Program.
2. A development which provides, pursuant to federal, state or other local programs, a fewer number of affordable dwelling units required under Sect. 804 above, subject to terms and restrictions equivalent to the requirements of this Part, shall provide the additional number of affordable dwelling units necessary to make up the shortage.
3. The rents and sales prices for affordable dwelling units provided pursuant to federal, state or other local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations provided rents and sale prices shall not exceed those set pursuant to this Part.

### 2-817

#### **Violations and Penalties**

In addition to the provisions set forth in Part 9 of Article 18, the following shall apply whenever any person, whether owner, lessee, principal, agent, employee or otherwise, violates any provision of this Part, or permits any such violation, or fails to comply with any of the requirements hereof:

1. Owners of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part shall be fined fifty (50) dollars per day per unit until such affidavit or certificate is filed, but only after written notice and a reasonable time to comply is provided. Fines levied pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
2. Renters of affordable dwelling units who shall fail to submit executed affidavits or certifications as required by this Part, shall be subject to lease termination and eviction procedures as provided in Sect. 813 above.
3. Owners and renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall be guilty of a misdemeanor and shall be fined \$1,000.00.
  - A. Fines levied against owners pursuant to this paragraph shall become liens upon the real property and shall accumulate interest at the judgment rate of interest.
  - B. Renters of affordable dwelling units who shall falsely swear or who shall execute an affidavit or certification required by this Part knowing the statements contained therein to be false shall also be subject to lease termination and eviction procedures as provided in Sect. 813 above.
  - C. Owners of individual affordable dwelling units who shall falsely swear that they continue to occupy their respective affordable dwelling unit as their domicile shall be subject to mandamus or other suit, action or proceeding to require such owner to either sell the unit to someone who meets the eligibility requirements established pursuant to this Part or to occupy such affordable dwelling unit as a domicile.

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### **2-818 Enforcement and Court Appeals**

1. The Board of Supervisors or designee shall have all the enforcement authority provided under its Zoning and Subdivision Ordinances to enforce the provisions of the Affordable Housing Dwelling Unit Program.
2. Notwithstanding the provisions of Section 15.2-2311 of Va. Code Ann., any person aggrieved by a decision of the ADU Advisory Board or by the Board of Supervisors in the case of a decision made by the latter regarding an appeal of affordable dwelling unit for sale and rental prices, or by any decision made by an administrative officer in the administration or enforcement of the Affordable Dwelling Unit Program, may appeal such decision to the Circuit Court for Fairfax County by filing a petition of appeal which specifies the grounds upon which aggrieved within thirty (30) days from the date of the decision.
3. Any petition of appeal properly filed pursuant to Par. 2 above shall not constitute a de novo proceeding and shall be considered by the Circuit Court in a manner similar to petitions filed pursuant to Section 15.2-2314 of Va. Code Ann.

**2-819 Deleted by Amendment #98-306, Adopted March 30, 1998, Effective March 31, 1998, 12:01 AM**

### **2-820 Provisions for Mobile Home Parks**

To encourage the redevelopment of mobile home parks to house low and moderate income families in Fairfax County, in conjunction with the review and approval of a rezoning application and proffered generalized development plan, the Board of Supervisors may grant an increase in the number of mobile homes or dwelling units per acre permitted in the R-MHP District by a factor of fifty (50) percent. Where deemed necessary, in granting such increase in density for the provision of moderately-priced housing units, the Board may waive other regulations of the R-MHP District and the provisions of Par. 2 of Sect. 308 above as such provisions apply to lots comprised of marine clays.

**2-821 Deleted by Amendment #98-306, Adopted March 30, 1998, Effective March 31, 1998, 12:01 AM**

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### SLIDING SCALE REQUIREMENT FOR AFFORDABLE DWELLING UNITS

The following examples demonstrate the sliding scale percentage of affordable dwelling units required at various development density levels for two sample comprehensive plan density ranges: 4-5 dwelling units/acre and 5-8 dwelling units/acre. These examples are provided for illustration only and do not represent all possible development density levels or density ranges specified in the adopted comprehensive plan. These figures were calculated in accordance with the provisions Sect. 2-804 and have been rounded to two decimal points for ease of illustration only. In applying the applicable formula to a proposed development, the actual number of affordable dwelling units required should be rounded in accordance with Sect. 2-804.

EXAMPLE 1: Adopted Comprehensive Plan Density Range: 4 to 5 dwelling units per acre  
Adjusted Density Range Providing for a 20% Increase: 4.80 to 6.00 dwelling units per acre

Approved Density du/a=dwelling units/acre	% of ADUs Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
0.00 to 4.00 du/a	0.00%
4.10 du/a	1.04%
4.20 du/a	2.08%
4.30 du/a	3.12%
4.40 du/a	4.17%
4.50 du/a	5.21%
4.60 du/a	6.25%
4.70 du/a	7.29%
4.80 du/a	8.33%
4.90 du/a	9.38%
5.00 du/a	10.42%
5.10 du/a	11.46%
5.20 du/a	12.50%
5.30 du/a	12.50%
5.40 du/a	12.50%
5.50 du/a	12.50%
5.60 du/a	12.50%
5.70 du/a	12.50%
5.80 du/a	12.50%
5.90 du/a	12.50%
6.00 du/a	12.50%



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EXAMPLE 2: Adopted Comprehensive Plan Density Range: 5 to 8 dwelling units per acre

Adjusted Density Range Providing for a 10% Increase: 5.50 to 8.80 dwelling units per acre

Adjusted Density Range Providing for a 20% Increase: 6.00 to 9.60 dwelling units per acre

Approved Density du/a=dwelling units/acre	% of ADU Required When a 10% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range	% of ADU Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
0.00 to 5.00 du/a	0.00%	0.00%
5.10 du/a	0.19%	0.35%
5.20 du/a	0.38%	0.69%
5.30 du/a	0.57%	1.04%
5.40 du/a	0.76%	1.39%
5.50 du/a	0.95%	1.74%
5.60 du/a	1.14%	2.08%
5.70 du/a	1.33%	2.43%
5.80 du/a	1.52%	2.78%
5.90 du/a	1.70%	3.13%
6.00 du/a	1.89%	3.74%
6.10 du/a	2.08%	3.82%
6.20 du/a	2.27%	4.17%
6.30 du/a	2.46%	4.51%
6.40 du/a	2.65%	4.86%
6.50 du/a	2.84%	5.21%
6.60 du/a	3.03%	5.56%
6.70 du/a	3.22%	5.90%
6.80 du/a	3.41%	6.25%
6.90 du/a	3.60%	6.60%
7.00 du/a	3.79%	6.94%
7.10 du/a	3.98%	7.29%
7.20 du/a	4.17%	7.64%
7.30 du/a	4.36%	7.99%
7.40 du/a	4.55%	8.33%
7.50 du/a	4.73%	8.68%
7.60 du/a	4.92%	9.03%
7.70 du/a	5.11%	9.38%
7.80 du/a	5.30%	9.72%
7.90 du/a	5.49%	10.07%
8.00 du/a	5.68%	10.42%
8.10 du/a	5.87%	10.76%

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Approved Density du/a=dwelling units/acre	% of ADU Required When a 10% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range	% of ADU Required When a 20% Density Bonus has been Applied to the Adopted Comprehensive Plan Density Range
8.20 du/a	6.06%	11.11%
8.30 du/a	6.25%	11.46%
8.40 du/a	6.25%	11.80%
8.50 du/a	6.25%	12.15%
8.60 du/a	6.25%	12.50%
8.70 du/a	6.25%	12.50%
8.80 du/a	6.25%	12.50%
8.90 du/a	6.25%	12.50%
9.00 du/a	6.25%	12.50%
9.10 du/a	6.25%	12.50%
9.20 du/a	6.25%	12.50%
9.30 du/a	6.25%	12.50%
9.40 du/a	6.25%	12.50%
9.50 du/a	6.25%	12.50%
9.60 du/a	6.25%	12.50%

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### EXAMPLE CALCULATIONS FOR A MIXED DWELLING UNIT DEVELOPMENT:

At the developer's option, a 10% density bonus may be applied to the multiple family dwelling unit portion and a 20% density bonus may be applied to the single family attached dwelling unit portion. In such cases, calculation of the required number of ADU shall be as follows:

Assumptions: 300 unit development, of which 100 single family attached dwelling units and 200 multiple family dwelling units are to be constructed on 24.1 acres and the Adopted Comprehensive Plan Density Range is 8-12 dwelling units/acre (du/a)

The adjusted density range for the multiple family portion is 8.8-13.2 du/a

The adjusted density range for the single family attached portion is 9.6-14.4 du/a

Proposed density is 12.45 du/a

Calculation of Required Affordable Dwelling Units:

Multiple Family, in accordance with Par. 1C(2)(a) of Sect. 2-804:

$$\frac{12.45 - 8}{13.2 - 8.8} \times 6.25 = 6.32\% \text{ ADU requirement, however, the maximum ADU requirement for multiple family uses where a 10\% bonus has been applied is 6.25\%}$$

$$200 \text{ du} \times 6.25\% = 12.50 \text{ ADUs}$$

Single Family, in accordance with Par. 1C(2)(b) of Sect. 2-804:

$$\frac{12.45 - 8}{14.4 - 9.6} \times 12.5 = 11.59\% \text{ ADU requirement}$$

$$100 \text{ du} \times 11.59\% = 11.59 \text{ ADUs}$$

$$\text{Total ADUs required in this sample development: } 12.50 + 11.59 = 24.09 \text{ ADUs rounded to } 24 \text{ ADUs}$$

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### **PART 9      2-900 FLOODPLAIN REGULATIONS**

#### **2-901      Purpose and Intent**

In furtherance of the zoning powers, purposes and jurisdictions provided for by Sections 15.2-2280, 15.2-2283 and 15.2-2284, Code of Virginia, 1950, as amended, these regulations are created to provide for safety from flood and other dangers; to protect against loss of life, health, or property from flood or other dangers; and to preserve and protect floodplains in as natural a state as possible for the preservation of wildlife habitats, for the maintenance of the natural integrity and function of the streams, for the protection of water quality, and for the promotion of a zone for ground water recharge.

#### **2-902      Administration**

1. The provisions of this Part shall apply to all land within a floodplain. The floodplain limits shown on the Zoning Map shall be used as a guide; provided, however, that only those land areas which meet the definition of floodplain shall be subject to the provisions of this Part.
2. The Director shall be responsible for the administration of this Part. He shall review all proposed uses to determine whether the land on which the proposed use is located is in a floodplain. The Director may, in appropriate cases, require information from the applicant, including, but not limited to, an engineering study of the floodplain. Upon a determination that the land on which the proposed use is located is in a floodplain, he shall determine whether such use may be permitted in accordance with the provisions of Sect. 903 below or requires the approval of a special exception as set forth in Sect. 904 below.
3. Any decision of the Director or Board regarding a use in a floodplain shall be based on consideration of at least all of the following factors:
  - A. Type and location of proposed structure and/or use
  - B. Access to site
  - C. Frequency and nature of flooding
  - D. Nature and extent of any proposed grading or fill
  - E. Impact of proposal on the floodplain on properties upstream and downstream
  - F. Potential of proposal to cause or increase flooding or to jeopardize human life
  - G. Impact of the proposed use on the natural environment and on water quality

#### **2-903      Permitted Uses**

Except as provided in Par. 10 below for cluster subdivisions, the following uses and topographic improvements, as qualified, may be permitted in a floodplain upon a determination by the Director that such use is permitted in the zoning district in which located, and that the use is in accordance with the provisions of this Part and the standards and criteria set forth in the Public Facilities

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Manual. Any such approval by the Director shall be in writing and shall specify such conditions deemed necessary to ensure that the proposed construction and resultant use conform to the provisions of this Part.

Any use, including associated fill, permitted in the zoning district in which located, which does not meet the qualifications set forth below as determined by the Director, may be permitted upon the approval of a special exception by the Board.

1. Any use within a minor floodplain. As set forth in the definition of floodplain, a minor floodplain is a floodplain which has a drainage area greater than 70 acres but less than 360 acres.
2. Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting; provided, however, that such use does not require the approval of a Building Permit or require major fill. All uses permitted by this paragraph shall be operated in accordance with a conservation plan prepared in accordance with the standards of the Northern Virginia Soil and Water Conservation District.
3. Residential uses accessory to single family detached and attached dwellings such as play areas, lawns, paved tennis or play courts, trails, gardens, patios, decks and docks, which do not require major fill and accessory structures such as children's playhouses, doghouses, storage structures and other similar structures which do not require approval of a Building Permit or require major fill. All structures shall be anchored to prevent flotation.
4. Community, commercial and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat launching ramps, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking, bicycle and equestrian trails. This paragraph shall not be deemed to permit any paved tennis or play court exceeding 5000 square feet in area, swimming pool, or any use requiring the approval of a Building Permit or requiring major fill.
5. Off-street parking and loading areas including aisles and driveways which do not exceed 5000 square feet in area, which will have one (1) foot or less depth of flooding and which will not require major fill.
6. Metrorail, railroad track and roadway floodplain crossings meeting WMATA, VDOT and/or Fairfax County design requirements and where any additional rise in water surface will not have an adverse effect upon the floodplain and/or will be set aside in an easement. A stream channel relocation proposed in conjunction with a crossing shall be subject to the provisions of the Public Facilities Manual.
7. Public and private utility lines, and all public uses and public improvements performed by or at the direction of the County, or as may be required by County ordinances, to include but not to be limited to channel improvements and erosion control, reservoirs, storm water management and best management practice facilities and similar uses provided the installation of such facilities is accomplished with appropriate easements or agreements and with the minimum disruption necessary to the floodplain.

Notwithstanding the above, ponds, reservoirs, storm water management and best management practice (BMP) facilities in floodplains which have a drainage area of 360 acres

## FAIRFAX COUNTY ZONING ORDINANCE

or greater and which are designed to serve a specific private development may be permitted only upon the approval of a special exception by the Board in accordance with the provisions of this Part.

8. Permitted accessory structures, other than those specified in Par. 3 above, and additions to single family detached and attached dwellings constructed prior to August 14, 1978, subject to the following conditions:
  - A. The estimated cost of the addition or accessory structure is less than fifty (50) percent of the market value as determined by the Department of Tax Administration of the existing structure.
  - B. The lowest part of the lowest floor of any such structure may be constructed less than eighteen (18) inches above the 100-year flood level provided it is determined that there is less than one (1) percent chance of flooding the structure in any given year, i.e., the structure is higher than the 100-year flood level.
  - C. The lowest part of the lowest floor of any accessory structure not meeting the requirements of Par. 8B above may be constructed below the base flood elevation provided the following standards are met:
    - (1) The size of the accessory structure shall not exceed 1000 square feet of gross floor area.
    - (2) The accessory structure shall only be used for parking and/or storage purposes.
    - (3) The accessory structure shall be constructed using flood damage resistant materials and all interior walls and floors shall be constructed using unfinished material.
    - (4) The accessory structure shall be anchored and floodproofed in accordance with the Virginia Uniform Statewide Building Code.
    - (5) Any mechanical, electrical and utility equipment in the accessory structure must be elevated to or above the base flood elevation.
  - D. As may be required by the Director, the applicant and owners shall sign a "hold harmless" agreement holding Fairfax County harmless from all adverse effects which may arise as a result of the construction and establishment of the proposed use within the floodplain. Such an agreement shall be recorded among the land records of Fairfax County.
9. Topographic improvements which do not require major fill.
10. For cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater, only driveways that do not exceed 5000 square feet in area and will not require major fill, the extension of or connection to existing public and private utilities, trails depicted on the

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comprehensive plan trails map, trails connecting to trails depicted on the comprehensive plan trails map, channel improvements and erosion control measures performed by or at the direction of the County or as may be required by County ordinances, regional stormwater management facilities included in the regional stormwater management plan, and roadway floodplain crossings, as qualified by Par. 6 above, shall be permitted in a floodplain with Director approval, provided that such encroachments are the minimum necessary and are provided in a manner that minimizes disturbance to the floodplain to the greatest practical extent, both as determined by the Director.

For the purpose of this Section, major fill shall be deemed to be any fill, regardless of amount, in an area greater than 5000 square feet or any fill in excess of 278 cubic yards in an area of 5000 square feet or less. The combined and cumulative area of any fill and pavement permitted under Paragraphs 2, 3, 4, 5 and 9 of this Section shall not exceed an area of 5000 square feet for all uses on a lot.

In addition, the provisions set forth above which exclude uses requiring a Building Permit shall not apply when such Building Permit is required for structures such as retaining walls, fences, ramps or trail bridges.

### 2-904

#### Special Exception Uses

1. All uses permitted by right, special permit or special exception in the zoning district in which located that are not approved by the Director under the provisions of Sect. 903 above may be permitted upon the approval of a special exception by the Board. Such special exception may be permitted subject to conformance with the provisions of this Part, the applicable special permit or special exception standards, the Purpose and Intent of the Zoning Ordinance, and the standards and criteria set forth in the Public Facilities Manual. Uses permitted by special permit or special exception shall be subject to their respective fees in addition to the fee for a Category 6 special exception use.
2. In addition to the submission requirements for all special exception uses set forth in Sect. 9-011, the following information shall be submitted for all Category 6 special exception applications for uses in a floodplain:
  - A. The following shall be shown and certified on the plat provided with the application:
    - (1) The delineation of the floodplain and the source of floodplain information, such as Federal Insurance Administration, USGS, Fairfax County, or other.
    - (2) Existing and proposed topography with a maximum contour interval of two (2) feet.
    - (3) Both normal and emergency ingress and egress from highway or street.
    - (4) Nature and extent of any proposed fill and any proposed compensatory cut areas with quantities.
    - (5) The location and dimensions of any structure or part thereof that is proposed for location in the floodplain.

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- (6) Elevation of the nearest 100-year floodplain, and the exact distance from the structure to the floodplain line at the nearest point.
  - (7) Lowest floor elevation, including basement, of all buildings, existing and proposed, and information relative to compliance with Federal and State floodproofing requirements.
- B. A written statement providing, in detail, the following information:
  - (1) Any existing or anticipated problems of flooding or erosion in the area of the application and upstream and downstream from the application property.
  - (2) Whether additional Federal and/or State permits are required.
- C. When structures are proposed to be erected, the following information shall be submitted:
  - (1) The proposed use of the structure.
  - (2) A statement certifying all floodproofing proposed, and indicating its compliance with all County, State and Federal requirements. This certification must be signed, sealed, and indicate the address of the certifying professional and it must cover all structural, electrical, mechanical, plumbing, water and sanitary facilities connected with the use.
  - (3) Acknowledgment, signed by the applicant, that the applicant is aware that flood insurance may be required by the applicant's lending institution and that the flood insurance rates may increase because of increases in risks to life and property.
- D. Any additional information as may be deemed necessary by the Director, to include but not be limited to an engineering study or detailed calculation on any proposed drainage improvement.

### **2-905 Use Limitations**

All permitted uses and all special exception uses in a floodplain shall be subject to the following provisions:

- 1. Except as may be permitted by Par. 6 and 7 of Sect. 903 above, any new construction, substantial improvements, or other development, including fill, when combined with all other existing, anticipated and planned development, shall not increase the water surface elevation above the 100-year flood level upstream and downstream, calculated in accordance with the provisions of the Public Facilities Manual.
- 2. Except as may be permitted by Par. 8 of Sect. 903 above, the lowest elevation of the lowest floor of any proposed dwelling shall be eighteen (18) inches or greater above the water-surface elevation of the 100-year flood level calculated in accordance with the provisions of the Public Facilities Manual.



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3. All uses shall be subject to the provisions of Par. 1 of Sect. 602 above.
4. No structure or substantial improvement to any existing structure shall be allowed unless adequate floodproofing as defined in the Public Facilities Manual is provided.
5. To the extent possible, stable vegetation shall be protected and maintained in the floodplain.
6. There shall be no storage of herbicides, pesticides, or toxic or hazardous substances as set forth in Title 40, Code of Federal Regulations, Parts 116.4 and 261.30 et seq., in a floodplain.
7. For uses other than those enumerated in Par. 2 and 3 of Sect. 903 above, the applicant shall demonstrate to the satisfaction of the approving authority the extent to which:
  - A. There are no other feasible options available to achieve the proposed use; and
  - B. The proposal is the least disruptive option to the floodplain; and
  - C. The proposal meets the environmental goals and objectives of the adopted comprehensive plan for the subject property.
8. Nothing herein shall be deemed to prohibit the refurbishing, refinishing, repair, reconstruction or other such improvements of the structure for an existing use provided such improvements are done in conformance with the Virginia Uniform Statewide Building Code and Article 15 of this Ordinance.
9. Nothing herein shall be deemed to preclude public uses and public improvements performed by or at the direction of the County.
10. Notwithstanding the minimum yard requirements specified by Sect. 415 above, dwellings and additions thereto proposed for location in a floodplain may be permitted subject to the provisions of this Part and Chapter 118 of The Code.
11. All uses and activities shall be subject to the provisions of Chapter 118 of The Code.
12. When as-built floor elevations are required by federal regulations or the Virginia Uniform Statewide Building Code for any structure, such elevations shall be submitted to the County on a standard Federal Emergency Management Agency (FEMA) Elevation Certificate prior to approval of the final inspection. If a non-residential building is being floodproofed, then a FEMA Floodproofing Certificate shall be completed in addition to the Elevation Certificate. In the case of special exception uses, the Elevation Certificate shall show compliance with the approved special exception elevations.

FAIRFAX COUNTY ZONING ORDINANCE

**PART 10 (DELETED BY AMENDMENT #89-171, ADOPTED MARCH 13, 1989,  
EFFECTIVE MARCH 14, 1989, 12:01 AM)**

## GENERAL REGULATIONS